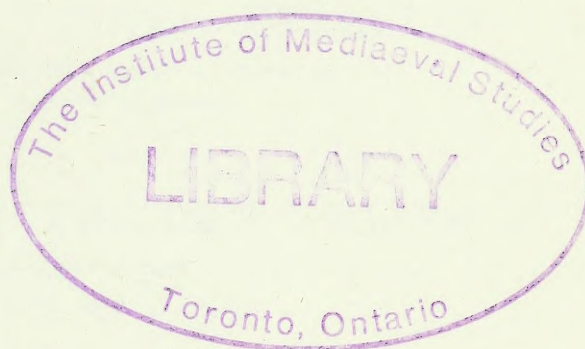


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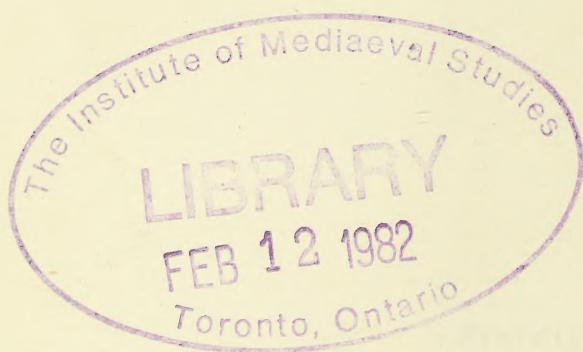


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THE
MARRIAGE LAWS
OF THE
BRITISH EMPIRE.

BY
WILLIAM PINDER EVERSLEY,
OF THE INNER TEMPLE AND SOUTH-EASTERN CIRCUIT;
RECORDER OF SUDBURY;
AND
WILLIAM FEILDEN CRAIES,
OF THE INNER AND MIDDLE TEMPLES AND WESTERN CIRCUIT;
BARRISTERS-AT-LAW.

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PREFACE.

IN dealing with the complex subject-matter of this Work, the Editors have been constrained by circumstances to divide the labour and the responsibility. Mr. EVERSLEY has dealt with the law of England and Ireland, and Mr. CRAIES with that of Scotland and the British Possessions and Protectorates.

The principle upon which the Authors have proceeded in the present Work is set out in the chapters on the Marriage Laws of England, viz., firstly to discuss the impediments to marriage; next, under the title of Solemnization of Marriage, to set out what are the essentials of a good marriage irrespective of the religious beliefs of the contracting parties; and lastly the Registration of the same. This arrangement has been adopted so far as was possible in the treatment of the Marriage Laws of Ireland, Scotland, and of the different British Possessions in various parts of the world. In Part III. of the book the statutory portion of the Marriage Laws of England, Ireland and Scotland are fully set forth, so that the reader can find to his hand the text of any enactment dealing with marriage in those countries without being obliged to refer to (perhaps) several volumes of the Statutes in search for an authority in

the text. This was not found practicable in the case of the Laws and Ordinances, &c. obtaining in the foreign possessions; but the readers of this book who in those places wish to consult the text of their local statutes, &c., have no doubt easy access to such.

Though the marriage law of England may be said to be the basis of the marriage law of many countries and places forming the British Empire, yet owing to the manner in which that Empire has developed, there is no one system of marriage law applicable to all its constituent territories. Indeed, there is far greater formal diversity than exists even in the many States of the North American Union.

In England and Ireland the marriage laws, resting originally on the canons and usages of the Western Church, have developed on closely similar lines. The important change wrought in England by the Marriage Act of 1836 was followed in Ireland by the Marriages (Ireland) Act, 1844, passed in consequence of the decision in *Reg. v. Millis* (10 Cl. & F. 534), and in 1863 by the Marriage Law (Ireland) Amendment Act of that year enacted to secure (*inter alia*) the proper registration of all marriages in Ireland. But in Ireland important variations were rendered necessary in consequence of the disestablishment of the Protestant Episcopal Church in 1869, placing all the recognized religious bodies (save Jews) on an equal plane, and by reason of the predominance of the Roman Catholic Church in that country.

The Isle of Man closely follows the English law. The Channel Islands present a combination of the

custom of Normandy with the marriage rules of the Church of England, strongly modified by island legislation.

The law of Scotland, while of common origin with that of England and Ireland, has been developed with closer regard to the Roman law and to that of Holland, and still retains the old conception of marriage as a contract which need not be celebrated *ex facie ecclesiæ*.

From the point of view of the marriage laws, British Possessions fall into two classes:—

1. Planted colonies, where the English law forms part of the original law of the settlers, or has been formally declared to be the basis of the colonial law. It should be observed that Lord Hardwicke's Act never applied to any of these possessions, and that common law marriages would be lawful, unless prohibited by local legislation. The table of prohibited degrees established at the Reformation applies to such colonies, unless altered by local law; but Lord Lyndhurst's Act does not apply to colonies planted before it was passed.

2. Conquered or ceded possessions, in which the law of the original inhabitants or settlers has been retained with or without modification. These possessions fall into two divisions:—

(a) Possessions acquired from the Dutch, French, or Spanish.

(i) In British Guiana, Cape of Good Hope and Ceylon, the Roman-Dutch law was on conquest or cession recognized as the common law of the possession, and subject to legislative modifications still so continues. In these pos-

sessions questions on the law of marriage not settled by local Act or ordinance must be solved by reference to the Roman-Dutch law so far as applicable to colonial conditions.

(ii) In Mauritius and Seychelles, Quebec and St. Lucia, the fundamental law was originally French. The first two possessions having been acquired after the Revolution, the Napoleonic Codes were to some extent in force. The law of Quebec rested on the custom of Paris. In St. Lucia, French law received less recognition. But in all these possessions the law of marriage now rests almost entirely on modern codes and ordinances.

(iii) In Trinidad, the Spanish law which prevailed at the date of conquest has been almost wholly swept away by legislation. In Gibraltar the English law obtains.

(b) Possessions acquired from non-Christian powers.

In British India and in East and West Africa and the Malay Peninsula where the bulk of the population is neither Christian nor European, it has been necessary to provide for the recognition of unions which are not marriages in the European sense of the term. In India, the Straits Settlements, Ceylon and East and West Africa, Mohammedan marriages are recognized as such. In British India it has been found necessary to make the marriage law rest on the personal law of the inhabitants, considered mainly by reference to their religious profession. Cyprus, owing to the peculiarities of the British tenure of the island, is dealt with in the same way.

In certain possessions—*e.g.*, British Guiana, Mauritius and Natal—into which there has been an influx of Asiatic immigrants, legislation has been passed to accord recognition to the marriages of such persons. This legislation is applicable to natives of India; but no Colony seems yet to have ventured on any definite legislation with reference to the marriages of Chinese settlers in British colonies.

Marriages under British law *en pays de capitulations* are subject to the Foreign Marriage Act, 1892, and to the Orders in Council made under that Act and the Foreign Jurisdiction Act, 1890. Under the same Acts provision can be made for marriage under British law in protectorates and spheres of influence.

Many British Possessions afford examples of consolidation and codification of the marriage laws which the Mother Country might well follow. So far as relates to monogamous marriages, colonial legislation does not vary much from the English law except in the absence of special provisions for marriages by the Anglican rite.

In attempting to set forth briefly the diverse laws of many possessions, it is impossible to pose as an expert as to each possession, or to do more than indicate the sources of the local law and the chief points settled by legislation or judicial decision.

W. P. E.

W. F. C.

October, 1910.

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CORRIGENDA.

Page 7, note (c). For *Beach v. Merrick* read *Bench v. Merrick*.

Page 41, note (f). For p. 236 read p. 222.

Page 43, note (l). For *Knee* read *Knox*.

Page 48, note (g). For Ferguson (Sc.), 229 read 2 Shaw (Sc.), 495.

Page 54, line 9. For “celebrations” read “*celebrationis*.”

Page 237. Read 11 Geo. 4 & 1 Will. 4, c. 18, ss. 1, 4, 5, for ss. 1, 45.

LAWS OF MARRIAGE.

Part I.

INTRODUCTORY.

MARRIAGE may be defined to be "the voluntary social union of a man and a woman for an unlimited time which is evidenced by some legal form or ceremony, and is incapable of being dissolved at the mere will of the parties."

The contract of marriage by the law of England is a civil contract, and the results that flow from it, both social and legal, in nowise depend upon the form of the ceremony or the views of those who enter into the marriage state (*a*).

Marriage as understood in Christendom is the voluntary union for life of one man and one woman, to the exclusion of all others (*b*).

Polygamous marriages are recognized in India and certain British possessions in the case of those who, by their personal, religious or domiciliary law, are permitted to contract them.

If a domiciled British subject while resident in a foreign country goes through the local form of marriage with a person whose native laws permit of polygamy with the intention of contracting a native, and not a Christian or monogamous marriage, such union will not be recognized by an English Court (*c*).

But if it was impossible for a person domiciled in such country (though of British birth) to contract marriage there according

(*a*) 1 Bl. Comm. 433 ; *Harrod v. Harrod*, 1 K. & J. 14, 16 ; and see *R. v. Dibdin*, (1910) P. 57.

(*b*) See *Hyde v. Hyde and Woodmansee*, L. R. 1 P. & D. 130, 133.

(*c*) *Hyde v. Hyde and Woodmansee* (*ubi supra*) ; *In re Bethell*, *Bethell v. Hildyard*, 38 Ch. D. 220. The former case was that of a marriage in the State of Utah (U. S. A.),

to any Christian religious rites and ceremonies, and it was intended by the parties that the union should be monogamous and not polygamous, perhaps its validity might be recognized by the British Courts (*d*).

Subject to certain disabilities, the majority of persons of opposite sexes are by the law of England entitled to enter into the contract of marriage.

This contract, when validly entered into, endures for the life of the parties unless annulled or dissolved by a competent tribunal or by legislation.

A valid and binding marriage may be defined to be a marriage between parties in all respects competent and willing to contract it which is solemnized with the requisite forms and ceremonies.

Impediments to marriage fall into two classes, canonical and civil. The canonical impediment is called an "*impedimentum impeditivum*," that is, an obstruction in the way of the celebration of the marriage, such as impotency, fraud, force, or duress, and renders the marriage voidable (*e*).

The civil impediment is called an "*impedimentum dirimens*," which affects the validity of the marriage, notwithstanding it has been actually celebrated, such as a prior marriage, want of age, idiocy, lunacy, or mental incapacity, and the violation of statutory provisions relating to marriage, and renders the marriage void (*f*).

A *void* marriage is one which is good for no legal purpose. Either party may disregard it, and enter into a contract of marriage with another person without incurring the penalties of bigamy. Its invalidity may be maintained in any proceeding in any Court between any parties, whether in the lifetime or after the death of the supposed spouses, and whether the question arises directly or collaterally (*g*).

A *voidable* marriage is one in the constitution of which there is an imperfection which can be inquired into only during the lifetime of both spouses in a proceeding instituted for the very purpose of obtaining a sentence declaring it null (*h*).

where Mormon marriages are recognized. The latter was a marriage with native and savage rites between a domiciled Englishman and a girl of the Baralong tribe while in Bechuanaland, South Africa, whose laws and customs permitted a form of polygamy. In this case there was no evidence that the Englishman meant to contract a Christian or monogamous union.

(*d*) See Dicey, Conflict of Laws (2nd ed.), 614, 621, and other authorities there cited.

(*e*) Shelf. Mar. & Div. 154.

(*f*) *Ibid.*

(*g*) *Ibid.*, pp. 479—482.

(*h*) *Ibid.*

The term "voidable" implies an option to the parties to treat the relationship between them as binding or not binding. A voidable marriage, until set aside, is valid for all civil purposes (*i*); when set aside, it is rendered void from the beginning (*k*).

These disabilities form grounds for suits for nullity of marriage; that is, for pronouncing the marriage null and void. The jurisdiction over suits for nullity of marriage is exercised in England by the Probate, Divorce and Admiralty Division of the High Court of Justice (*l*).

Suits for nullity founded on a disability or impediment rendering the marriage voidable only must be brought in the lifetime of both the parties, otherwise the marriage will be held good.

Domicil is not necessary to found jurisdiction in nullity suits; and matrimonial residence is sufficient to give the Court power to pronounce decrees of nullity (*m*).

(*i*) 1 Bl. Comm. 434.

(*k*) *Elliott v. Gurr*, 2 Phill. 16.

(*l*) 20 & 21 Vict. c. 85, s. 6; 36 & 37 Vict. c. 66, s. 31.

(*m*) *Roberts (f. c. Brennan) v. Brennan*, (1902) P. 143; and see remarks of Sir G. Barnes in *Ogden v. Ogden*, (1908) P. 46.

CHAPTER I.

IMPOTENCY.

IMPOTENCY of one or both of the parties to consummate the marriage is a disability or impediment rendering the marriage voidable.

Impotency consists in the incapacity for copulation, or in the impossibility of accomplishing the act of procreation (*a*), which may arise from malformation, frigidity of constitution or any other physical defect in the organs of generation.

A capacity for consummation of marriage is implied in the contract, and consummation is an essential duty for which the parties stipulate; and the incapacity of either party to satisfy that duty affords a ground for nullifying the contract (*b*).

A suit for nullity grounded on impotency must be brought in the lifetime of both parties (*c*). In such a suit it is open to either party to set up the impotency of the other; but neither may set up his or her impotency for the purpose of annulling the marriage (*d*). But where one party married the other knowing him or her to be impotent, in such a case the Court would no doubt impute a lack of sincerity to the petitioner.

There must be an *impotentia copulandi* on the part of the man or of the woman, proceeding from malformation, frigidity, disease, or some physical defect in the organs of generation. It may arise from mere nervousness or hysteria on the part of the woman; and where it is found that consummation is practically hopeless a decree of nullity will be made (*e*).

(*a*) Shelf. Mar. & Div. 202.

(*b*) *Dalrymple v. Dalrymple*, 2 Hag. Con. Rep. 54, 62.

(*c*) *A. v. B. and another*, L. R. 1 P. & D. 559.

(*d*) *Norton v. Seton*, 3 Phill. 147.

(*e*) *G. v. G.*, L. R. 2 P. & D. 287; *P. v. L. (f. c. P.)*, cited in *S. v. A. (otherwise S.)*, 3 P. & D. 72.

The impediment must exist at the time of the marriage, and be such as cannot be cured without endangering life (*f*).

Impotency supervening after marriage is no ground for nullity, though arising from causes having their origin before marriage (*g*).

If the impediment be the result of accident, the presumption is that it began after marriage; if natural, the presumption is the reverse (*h*). If there is a possibility that its cause may be removed, though a cure is highly improbable, the Court will not decree a sentence of nullity (*i*), if by delay and adoption of reasonable medical means a cure may be effected (*k*).

It is unnecessary that any structural impediment should exist, if consummation is practically impossible (*l*).

Nullity, seemingly, may be decreed on the ground of the sexual organs admitting only of partial connection (*m*).

As a general rule a decree of nullity for this cause, whether arising from malformation or other cause, will not be granted without an order to inspect the respondent obtained at the instance of the petitioner. If the husband is charged with impotency, the Court usually requires a medical certificate to the effect that the woman is *virgo intacta* and *apta viro* (*n*); but where the suit is grounded on the malformation of the wife, the inspection of the husband is not usually ordered (*o*). Persistent refusal to consummate (coupled with a refusal to submit to an order for medical examination) will be treated as evidence of incapacity to consummate (*p*).

The calling on a respondent to submit to an operation is not a condition precedent to the petitioner's right to a decree (*q*). The onus of proof of the impotency of the respondent lies on the petitioner (*r*).

Where there has been a refusal to consummate the marriage after a reasonable time, the Court will draw the inference that such refusal is due to want of capacity (*s*).

What is known as "triennial cohabitation" is generally required

(*f*) *Dease v. Aveling*, 1 Rob. Eccl. Rep. 279; *B. v. B.*, 1 Eccl. & Adm. Rep. 248; *Williams v. Williams*, 30 L. J. P. M. & A. 73.

(*g*) *Brown v. Brown*, 1 Hag. Eccl. Rep. 523; *Briggs v. Morgan*, 3 Phill. 324.

(*h*) *Brown v. Brown*, *ubi supra*.

(*i*) *Stagg v. Edgecombe*, 32 L. J. P. M. & A. 153.

(*k*) *Welde v. Welde*, 2 Lee, 578.

(*l*) *G. v. G.*, L. R. 2 P. & D. 287; *H. v. P. (f. c. H.)*, L. R. 3 P. & D. 126.

(*m*) *Dease v. Aveling*, 1 Rob. Eccl. Rep. 279.

(*n*) *Pollard v. Wybourn*, 1 Hag. Eccl. Rep. 727.

(*o*) *B. v. L. (f. c. B.)*, L. R. 1 P. & D. 639.

(*p*) *F. v. P. (f. c. F.)*, 75 L. T. 192; *B. (otherwise H.) v. B.*, (1901) P. 39.

(*q*) *W. v. H.*, 30 L. J. P. M. & A. 73.

(*r*) *Cuno v. Cuno*, L. R. 2 H. L. (Sc.) 300.

(*s*) *S. v. A. (otherwise S.)*, L. R. 3 P. & D. 72; *G. v. G.*, L. R. 2 P. & D. 287.

before suits of nullity on this ground can be brought (*t*), or an order for inspection granted (*u*). This period is deemed to be a reasonable and sufficient time within which to ascertain whether it is mere coyness or nervousness in either of the parties, or whether there is any physical incapacity. Such triennial cohabitation need not be uninterrupted (*x*), but if the interruption has been for a considerable period, a corresponding period of cohabitation must be made up beyond the expired period of three years, so as to complete three years in which the parties must have been living as man and wife (*y*).

This rule is not a hard and fast one, and is only applied where the impotency is left to be presumed from continual non-consummation, for where such can be proved *aliunde* the Court will never resort to it (*z*), and is relaxed where it is discovered that there is a natural malformation or physical infirmity apparent on inspection (*a*).

(*t*) *Sparrow v. Harrison*, 3 Curt. 27; 4 Moo. P. C. 96; *Welde v. Welde*, 2 Lee, 578.

(*u*) *Aleson v. Aleson*, 2 Lee, 556; *Briggs v. Morgan*, 3 Phill. 329; *M. (f. c. H.) v. H.*, 34 L. J. P. M. & A. 12.

(*x*) *Sparrow v. Harrison*, *ubi sup.*

(*y*) *Welde v. Welde*, *ubi sup.*

(*z*) *D. (f. c. F.) v. F.*, 34 L. J. P. M. & A. 66.

(*a*) *Scott v. Jones*, 2 Not. Cas. 36.

CHAPTER II.

WANT OF CONSENT OF PARTIES.

THE mutual consent of the parties to a marriage freely expressed in the manner required by law is essential to the formation of the contract.

Where the parties or party are or is not *sui juris* there is also required the consent of those legally entitled to give or withhold their consent to the marriage (*a*).

The consent of the parties is not deemed to have been given—

- (i) Where the proposed spouses or one of them are or is under the legal age for contracting marriage (*b*).
- (ii) Where both or one of the spouses are or is subjected to error (*c*), fraud (*d*), or duress (*dd*) before the ceremony

(*a*) Since the Marriage Act of 1823 (4 Geo. 4, c. 76, s. 23), *post*, p. 75, the want of consent of parents or guardians to the marriage of infants is not an impediment to marriage in the full strict sense of the term which renders a marriage without such consent void or voidable. Yet such want of consent is in the nature of an impediment to which effect can be given, for an expression of dissent given by an authorized and proper party to a marriage of an infant renders all notices for such marriage void unless and until such dissent is withdrawn. For the above reason this quasi-impediment is treated of in the present chapter.

(*b*) See *post*, p. 11.

(*c*) The only “error” which would nowadays render a marriage voidable is the “*error personæ*” of the Canonists; that is, where one person is substituted for another. A mere mistake of name is no ground for relief; and where before marriage a mistake is made by one spouse as to the identity of the other spouse, the subsequent marriage is not rendered invalid (*Beau Fielding’s Case*, 14 Howell, State Trials, 1327). The old “*error qualitatis*” is no longer a ground for annulling the marriage. Antenuptial incontinence of the woman unknown to the man is not a ground for nullifying the marriage, even if such incontinence has resulted in her pregnancy (*Moss v. Moss*, (1897) P. 263). That which might be a good defence to an action for breach of promise of marriage (*Baker v. Cartwright*, 30 L. J. C. P. 364; *Foulkes v. Sellway*, 3 Esp. 336; *Baddeley v. Mortlock*, Holt, 151; *Irving v. Greenwood*, 1 C. & P. 350; *Beach v. Merriek*, 1 C. & K. 463; *Young and Murphy*, 3 Scott, 379) is not one to nullify a marriage.

(*d*) Fraud, to vitiate a marriage and render it null and void, must be of such a nature as to be inconsistent with a real and genuine consent to the contract on the part of both spouses (see *Turner v. Meyers*, 1 Hag. Con. Rep. 419; *Earl of Portsmouth v. Countess of Portsmouth*, 1 Hag. Eccl. Rep. 355; *Scott v. Sebright*, 12 P. D. 21; *Earl of Durham v. Countess of Durham*, 10 P. D. 80; *Hunter v. Edney*, 10 P. D. 93; *Cannon v. Smalley*, 10 P. D. 96; *Cooper v. Crane*, (1891) P. 369; *Ford v. Stier*, (1896)

(*dd*) See next page.

of marriage. But in these cases consent will be presumed unless the injured party seeks to annul the marriage within a reasonable time after its celebration, for subsequent cohabitation may cure the original defect, and render the marriage good for all purposes.

An infant, not being a widower or widow, proposing to marry, must obtain the consent of the father, if living (*e*), or if dead, leaving no will appointing joint guardian with mother, of the mother (*f*); or if such joint guardian has been appointed, of the mother and the guardian (*g*); or if father and mother be dead, of any guardian or guardians by the father or mother, or both (*h*);

P. 1). In the case of adults the fraud perpetrated must be in respect of the essentials and not mere accidentals of the marriage tie (see *Wakefield v. Mackay*, 1 Phill. 134, n.). In the case of infants there is a ready interference on the part of the Courts to redress a wrong, such as fraud practised on a ward by his guardian (*Harford v. Morris*, 2 Hag. Con. Rep. 423), or by a trustee on his *cestui que trust*, over whom he may have obtained a great ascendancy (see *Wakefield v. Mackay*, *ubi supra*). Thus, in one case where it was alleged that a young woman under the influence of her mother believed that a ceremony in church was nothing more than a betrothal, she was held not to be a free agent, and the marriage was declared null (*Ford v. Stier*, *ubi supra*). A woman over twenty-one, who alleged she was kicked and coerced into believing that some untoward mishap (such as bankruptcy, or actions at the suit of creditors) would ensue unless she married, was held entitled to relief against the man, and the marriage set aside. But the principle of these two cases is not likely to have an extended application (see *Cooper (f. c. Crane) v. Crane*, (1891) P. 369). Marriage brought about by a conspiracy may under certain circumstances be set aside, as where two or more conspire to make another person drunk, who, while in that state, is made to go through the form of marriage (see *Sullivan v. Sullivan*, 2 Hag. Con. Rep. 238; *Gore v. Gibson*, 13 M. & W. 623). Where, however, the fraud is brought about by a conspiracy, but the party against whom the marriage is sought to be set aside was not one of the conspirators, but ignorant of the fraud, the marriage remains good (see *Rex v. Inhabitants of Birmingham*, 8 B. & C. 29; *Sullivan v. Sullivan*, *ubi supra*). Fraud as to the spouse's family or fortune is no ground for setting the marriage aside (see *Wakefield v. Mackay*, *ubi supra*); nor is a false representation by a woman that she is a virgin or chaste (see *Wakefield v. Mackay*, *ubi supra*; *Moss v. Moss*, (1897) P. 263).

(*dd*) Duress or force is that harsh constraint which is illegally applied by one person to another, and may be either corporeal or mental. Corporeal is where the constraint takes the form of blows, rough usage, or confinement; and mental, where threats or menaces, or terrorising acts and words are used. A marriage brought about by duress is *de facto* a marriage, and cannot be avoided until proved to be purely the effect of compulsion, and not the result of choice (unbiassed by fear) between the consequences of compliance or refusal; but there must be an absolute unwillingness on the part of the person coerced. The amount of coercion required is not a fixed quantity, but may vary with the strength of the person to whom it may be applied (*per* Brett, J., in *Scott v. Sebright*, 12 P. D. 26). Fear of some untoward circumstance happening (not necessarily to the party coerced, but to some third person whose interests are a concern to the party coerced) is a necessary ingredient (see *Harford v. Morris*, 2 Hag. Con. Rep. 423; *Bartlett (f. c. Rice) v. Rice*, 72 L. T. 112; *Turner's Nullity Bill*, 17 Hans. Parly. Deb. (N. S.) 1133; *Rex v. Wakefield*, 2 Lew. Cr. Cas. 1; *Field's Nullity Bill*, 2 H. L. Cas. 48).

(*e*) 4 Geo. 4, c. 76, s. 16 (*post*, p. 74).

(*f*) 49 & 50 Vict. c. 27, s. 2.

(*g*) *Ibid.*

(*h*) *Ibid.* sects. 2, 3. If the guardians are appointed by both parents they must act jointly: *Ibid.* sect. 2.

or of any guardian or guardians appointed by the Chancery Division of the High Court of Justice (*i*).

If the parents or Chancery guardians shall become *non compos mentis*, or such Chancery guardians shall go beyond seas or unreasonably, or from undue motives, refuse consent, then the High Court may be petitioned to substitute others (*k*).

Illegitimate infants can have no lawfully appointed guardians except those given to them by the High Court (*l*).

A marriage celebrated without the consent of parents or guardians is not thereby rendered invalid (*m*), but is visited with penalties in the nature of forfeiture of all estate, right, title and interest in any property accruing to a person who fraudulently obtained the marriage without the consent of the proper parties in a suit by the Attorney-General (or Solicitor-General if the office of the Attorney-General be vacant) (*n*), by information at the relation of the proper party or parties (*o*).

A formal written consent is not necessary (*p*).

Consent may be given at the ceremony, which fact may be proved by the presence of the proper party who does not express his dissent (*q*).

Consent in the case of a marriage by ordinary licence (*r*), and after publication of banns, is presumed, but the presumption does not hold good where the proper party has remained totally ignorant of the marriage for some time after its celebration (*s*).

Notice of dissent by the proper parties to a marriage to be celebrated after publication of banns must be given to the minister before the ceremony (*t*), and in case of the ordinary's licence by entering a caveat to the grant, which must not issue until the caveat be withdrawn or pronounced groundless (*u*).

(*i*) 49 & 50 Vict. c. 27, s. 2.

(*k*) 4 Geo. 4, c. 76, s. 17 (*post*, p. 74).

(*l*) *Horner v. Horner*, 1 Hag. Con. Rep. 337; *Priestley v. Hughes*, 11 East, 1.

(*m*) *Rex v. Inhabitants of Birmingham*, 8 B. & C. 29.

(*n*) 4 Geo. 4, c. 76, s. 23 (*post*, p. 75); 19 & 20 Vict. c. 119, s. 19 (*post*, p. 110).

(*o*) 4 Geo. 4, c. 76, s. 25 (*post*, p. 76). The complaint of the proper party must be made within three months from the time of the marriage becoming known to the relator, and the information must be filed within a year after the solemnization of the marriage. The written authority of the relator should be filed with the information (*Att.-Gen. v. Willshire*, W. N. (1875) 182). The Court has no discretion to mitigate the penalty, but is bound to declare a forfeiture (*Att.-Gen. v. Mulley*, 4 Russ. 329). If both parties are guilty of fraud, the Court may direct a settlement of the property for the benefit of the then or any future marriage.

(*p*) *Hodgkinson v. Wulkie*, 1 Hag. Con. Rep. 262, 267.

(*q*) *Cope v. Burt*, 1 Hag. Con. Rep. 434.

(*r*) *Smith v. Huson*, 1 Phill. 287, 296.

(*s*) *Balfour v. Carpenter*, 1 Phill. 221.

(*t*) 4 Geo. 4, c. 76, s. 8 (*post*, p. 73).

(*u*) *Ibid.* sect. 11 (*post*, p. 73).

The proper parties may express their dissent to a marriage to be had on the superintendent's certificate (*x*) or licence (*y*) by writing at any time before the issue of such certificate or licence the word "forbidden" opposite to the entry of the notice of the intended marriage in the registrar's Marriage Notice book.

In the case of wards of Court, the consent of the Chancery Division of the High Court of Justice to their marriages is necessary.

Without obtaining the leave of the Court to attempt to marry (*z*), or to marry or to abet the marriage of, a ward of Court is a contempt, and punishable (*a*). Parties desirous of marrying wards of Court must petition the Court for leave to do so.

The Court will not allow its wards to marry without application for leave to do so, which leave will not be granted except on conditions and terms acceptable to the Court (*b*).

The jurisdiction of the Court is not ousted because the parents of the ward are alive, or there is a testamentary guardian; consent of parents or guardians to the ward's marriage does not render the leave of the Court unnecessary (*c*).

The Court will interfere with parents and guardians who endeavour to bring about a marriage without acquainting the Court with the fact, and commit the ward to the custody of another person (*d*).

The consents of parents or guardians are considered as part of the form or ceremony of marriage, and whether they are indispensable or not depends upon the *lex loci contractus* and not the *lex domicilii* or the personal law of the parties (*e*).

(*x*) 6 & 7 Will. 4, c. 85, ss. 9, 13 (*post*, p. 83).

(*y*) *Ibid.* sects. 10, 13 (*post*, p. 83).

(*z*) *Warter v. Yorke*, 19 Ves. 451.

(*a*) *Butler v. Freeman*, Ambl. 301; *Wellesley v. Duke of Beaufort*, 2 Russ. 1; *Phipps v. Earl of Anglesea*, 1 P. Wms. 696.

(*b*) *Smith v. Smith*, 3 Atk. 304; *Earl of Plymouth v. Lewis*, 2 Dick. 801.

(*c*) *Wellesley v. Duke of Beaufort*, *ubi supra*.

(*d*) *Vernon v. Vernon*, 10 Geo. 1, cited *Eyre v. Countess of Shrewsbury*, 2 P. Wms. 103, 113; *Pearce v. Crutchfield*, 14 Ves. 206; *Lord Shipbrook v. Lord Hinchinbrook*, 2 Dick. 567; *Tombes v. Elers*, 1 Dick. 88; and see *Smith v. Smith*, *ubi supra*.

(*e*) *Ogden v. Ogden*, (1908) P. 46; *Sottomayor v. De Barros*, 3 P. D. 1.

CHAPTER III.

NONAGE.

NONAGE, or want of age of the contracting parties, operates to render the marriage void on the twofold ground of a want of consent and the immaturity of the bodies or body of both parties or of one party to the engagement. The age of matrimonial consent is fourteen in the male and twelve in the female (*a*).

By the common law persons, it would seem, might marry at any age, and if they married under the age of consent, and after arriving at the *anni nubiles* agree to continue as husband and wife, the marriage was good (*aa*).

But since the abolition of marriage by pre-contract in which both parties or one are or is under seven years of age, the marriage is absolutely void.

Where both parties or one are or is above seven and under fourteen and twelve respectively, the marriage is imperfect and inchoate, depending for its validity in the first case on the consent of both on reaching the respective marriageable ages; and in the second case on the consent of that party who is under the marriageable age on reaching that period. Where the parties are above fourteen and twelve respectively, and under twenty-one, the marriage, if with the consent of parents or guardians, is good; even without such consent such marriage is good (*b*).

Though unlawful carnal connection with a girl under thirteen is a felony (*c*), and unlawful carnal connection with a girl between thirteen and sixteen is a misdemeanour (*d*), yet the common law age of consent to marry is not altered (*e*).

The law of Ireland on this subject is the same as that of England.

(*a*) Derived from the Roman and Canon Law.

(*aa*) Com. Dig., Baron and Feme, B. 5 and 6; and see Co. Litt. 33*a*.

(*b*) Where marriage is had without the consent of parents or guardians, the offending party is punished by forfeiting his or her interest in any property which has accrued by force of the marriage, 4 Geo. 4, c. 76, s. 23 (*post*, p. 75).

(*c*) 48 & 49 Vict. c. 69, s. 4.

(*d*) *Ibid.* sect. 5.

(*e*) The connection in both cases must be "unlawful," which is the word governing the constitution of the offences; and as that which is permitted by the law is not "unlawful," the connection of the sexes following on a marriage recognised by the law, though the wife may be within the ages specified in the above Act, is not unlawful and so criminal.

CHAPTER IV.

INSANITY AND DRUNKENNESS.

THE parties must both be of sound mind.

Insanity (*a*), or want of reason, is an absolute impediment to marriage, on the ground that where there is the absence of reason there is no power to consent, and that consent is of the essence of the contract of marriage. Mere weakness of understanding is not enough, but some sort of mental derangement evidenced by overt acts and conduct of the imbecile or lunatic (*aa*).

Insanity must exist at the time of the alleged marriage; if it supervenes after the marriage it forms no ground for nullity (*b*).

If the mind of one of the parties was diseased at the time of the inception of the matrimonial tie, no inquiry into the extent of the derangement consequent upon the disease will be made (*c*).

A valid marriage may be entered into in a lucid interval between two periods of madness or imbecility, provided the individual has not been found lunatic by inquisition (*d*). If insanity which existed before the marriage reappears immediately after the marriage, such reappearance may, it would seem, be treated as insanity existing at the time of the marriage (*e*).

A person on recovering sanity may institute proceedings to set aside a marriage had when *non compos*; and if insanity at the time of the formation of the contract is proved, the marriage will be void (*f*).

(*a*) For history of the law, see Wood Renton, *Lunacy*, p. 17.

(*aa*) *Earl of Portsmouth v. Countess of Portsmouth*, 1 Hag. Eccl. Rep. 355; *Hancock (f. c. Peaty) v. Peaty*, L. R. 1 P. & D. 335; but see remarks of Sir J. Hannen in *Durham v. Durham*, 10 P. D. 82.

(*b*) *Hancock v. Peaty*, *ubi supra*. One of the tests of the capacity to understand the nature of the contract is the absence or presence of morbid delusions on the subject of marriage (*Durham v. Durham*, *ubi supra*; *Hunter v. Edney*, 10 P. D. 93).

(*c*) *Parnell v. Parnell*, 2 Hag. Con. Rep. 169.

(*d*) *Turner v. Meyers*, 1 Hag. Con. Rep. 414; 51 Geo. 3, c. 37 (*post*, p. 71).

(*e*) See *K. v. K. (otherwise B.)*, (1910) P. 140.

(*f*) *Turner v. Meyers*, *ubi supra*. It is more than doubtful whether such marriage could be ratified by mere subsequent cohabitation. Wood Renton, *Lunacy*, p. 18.

A suit may be brought by a guardian to set aside the marriage of one who was imbecile or of weak mind (*g*).

Where the insanity is proved to be permanent, the burden of proof that the lunatic was sane at the time of the marriage is cast upon the person alleging the sanity; otherwise, the burden of proof lies on the person alleging the insanity (*h*).

If a person found a lunatic by commission marries before he or she has been declared sane by the proper authorities, the marriage is null and void to all intents and purposes (*i*).

Deaf Mutes.

Deaf and dumb persons may contract a valid marriage if knowledge of the nature of the contract is shown; the presumption of law is in favour of the validity of such marriage (*k*). A deaf and dumb woman who had never been taught to talk with her fingers, and could not read or write, was held to have lawfully contracted marriage, there being evidence that her conduct both before and after the ceremony showed that she understood the nature of the contract into which she had entered.

(*g*) *Wilkinson v. Wilkinson*, 4 Notes of Cases, 295. The Court will not pronounce its decree without the sanction of the petitioner. It will, however, proceed to try the issue of sanity or insanity raised before it. The proper course to raise the point of restoration to sanity is by motion for the Court to vacate its order appointing the guardian on the ground of the lunatic's recovery (see *Hancock (f. c. Peaty) v. Peaty*, L. R. 1 P. & D. 335). The question of the validity or invalidity of a marriage by reason of the insanity of one of the parties can be litigated by others than the parties to the contract.

(*h*) *Le Geyt v. O'Brien*, Milw. Ir. Eccl. Rep. 325.

(*i*) 51 Geo. 3, c. 37 (*post*, p. 71).

(*k*) *Harrod v. Harrod* (1854), 1 K. & J. 14, 16; 23 L. T. (O. S.) 243; 18 Jur. 853.

CHAPTER V.

CONSANGUINITY AND AFFINITY OR RELATIONSHIP WITHIN THE PROHIBITED DEGREES.

THE impediment of consanguinity or affinity (or relationship within the prohibited degrees) renders all marriages affected by it by persons domiciled in England null and void to all intents and purposes (*a*).

Consanguinity is the relationship of parties who are descended from the same ancestor, and is either in the direct or collateral line. In the direct line of ancestors and descendants marriage is absolutely unlawful, however remote the relationship may be. In the collateral line all beyond the first degree of the canon law computation (the third of the civil law), may contract valid marriages (*b*).

Affinity is the relationship which arises from marriage, and exists between one spouse and the relations of the other spouse. The kindred of one spouse may marry the kindred of the other (*c*); and one of the spouses may marry the affinis of the other spouse (*d*). By the law of England affinity must be created by marriage, and mere illicit carnal intercourse is not sufficient (*e*).

The Table of Prohibited Degrees inserted in the Book of Common Prayer (*f*) is part of the law of the realm, and is binding on both clergy and laity (*g*), and is not limited in its operation to members of the Church of England (*h*).

(*a*) 5 & 6 Will. 4, c. 45, s. 2 (*post*, p. 81). Before that Act such marriages, if not declared null by an Ecclesiastical Court in the lifetime of the parties, were treated as having the effect of valid marriages. This Act draws a distinction between affinity and consanguinity by declaring that marriages celebrated before its passing (August 31, 1835) by persons within the prohibited degrees of affinity shall not be annulled unless by decree pronounced in a suit depending at the time of the passing of the Act (sect. 1) (see *Butler v. Gastrill*, Gibb. Ch. 156).

(*b*) First cousins may contract a valid marriage.

(*c*) Shelf. Mar. & Div. 174; *Oxenham v. Gayre*, Bac. Abr. Mar. & Div. A.

(*d*) "Affinis mei affinis non est mihi affinis."

(*e*) *Wing v. Taylor* (*f. c. Wing*), 30 L. J. P. M. & A. 258; *Pagani v. Pagani*, L. R. 1 P. & D. 223.

(*f*) "Set forth by authority in 1563": Canon 99 (1603), *post*, p. 69; and commonly called Archbishop Parker's Table of Degrees.

(*g*) See 28 Hen. 8, c. 16, s. 2; 28 Hen. 8, c. 7, s. 7; and 32 Hen. 8, c. 38; *R. v. Chadwick*, 11 Q. B. 173; *Brook v. Brook*, 9 H. L. C. 193; 1 Stat. Rev. (2nd ed.) p. 370; and see *Sherwood v. Ray*, 1 Moo. P. C. 358.

(*h*) *In re De Wilton, De Wilton v. Montefiore*, (1900) 2 Ch. 481.

TABLE OF PROHIBITED DEGREES.

A man may not marry his

1. Grandmother.
2. Grandfather's wife.
3. Wife's grandmother.
4. Father's sister.
5. Mother's sister.
6. Father's brother's wife.
7. Mother's brother's wife.
8. Wife's father's sister.
9. Wife's mother's sister.
10. Mother.
11. Stepmother.
12. Wife's mother.
13. Daughter.
14. Wife's daughter.
15. Son's wife.
16. Sister.
17. *Wife's sister (i).*
18. Brother's wife.
19. Son's daughter.
20. Daughter's daughter.
21. Son's son's wife.
22. Daughter's son's wife.
23. Wife's son's daughter.
24. Wife's daughter's daughter.
25. Brother's daughter.
26. Sister's daughter.
27. Brother's son's wife.
28. Sister's son's wife.
29. Wife's brother's daughter.
30. Wife's sister's daughter.

A woman may not marry her

1. Grandfather.
2. Grandmother's husband.
3. Husband's grandfather.
4. Father's brother.
5. Mother's brother.
6. Father's sister's husband.
7. Mother's sister's husband.
8. Husband's father's brother.
9. Husband's mother's brother.
10. Father.
11. Stepfather.
12. Husband's father.
13. Son.
14. Husband's son.
15. Daughter's husband.
16. Brother.
17. Husband's brother.
18. Sister's husband.
19. Son's son.
20. Daughter's son.
21. Son's daughter's husband.
22. Daughter's daughter's husband.
23. Husband's son's son.
24. Husband's daughter's son.
25. Brother's son.
26. Sister's son.
27. Brother's daughter's husband.
28. Sister's daughter's husband.
29. Husband's brother's son.
30. Husband's sister's son.

The relationship of the half-blood is equally affected with the whole blood by this impediment or prohibition (*j*).

This impediment of consanguinity and affinity applies to those who are of illegitimate birth (*k*).

(*i*) This prohibition is almost wholly repealed by 7 Edw. 7, c. 47, *post*, p. 162. See *R. v. Dibdin*, (1910) P. 57.

(*j*) *Reg. v. Brighton*, 30 L. J. M. C. 197.

(*k*) *Horner v. Horner*, 1 Hag. Con. Rep. 337; *Blackmore v. Brider*, 2 Phill. 359; *Woods v. Woods*, 2 Curt. 516; *Reg. v. Brawn*, 1 C. & K. 144; *Reg. v. St. Giles-in-the-Fields*, 17 L. J. Q. B. 81.

CHAPTER VI.

PREVIOUS MARRIAGE.

By English law no person can contract a second marriage while the bond of a prior marriage contracted by him or her still subsists, *i.e.*, if the prior marriage is valid and has not been dissolved by the death of the other party or dissolved or annulled by the decree of a competent tribunal.

A pre-existing valid marriage is an impediment to a subsequent marriage by either of the spouses of the first marriage, rendering the second marriage null and void *ipso facto* and without judicial decree.

Such second marriage is called bigamous (*a*), and to contract such a marriage with knowledge that the former marriage is subsisting is a felony (*b*).

In suits for nullity on the ground of bigamy strict proof is required of the identity of the parties (*c*), but lapse of time is no bar to the bringing of the suit (*d*). Misconduct also, however gross, of a party seeking to annul a marriage by reason of bigamy is no bar to a decree of nullity (*e*).

The competency of a court of a foreign country to dissolve a marriage whether celebrated in England or elsewhere than in the country of the court on grounds sufficient or insufficient to dissolve it in England depends on the domicile of the parties, which is that of the husband (*f*).

(*a*) What is defined in modern English law as "bigamy" was known to the canon law as polygamy, for a "bigamist" was one who married a second time whether the consort of the previous marriage was alive or not.

(*b*) 24 & 25 Vict. c. 100, s. 57: "Whosoever being married shall marry any other person during the life of the former husband and wife, whether the second marriage shall have taken place in England or Ireland or elsewhere, shall be guilty of felony" (see 1 Russ. Cr. (7th ed.) 979; Archb. Cr. Pl. (24th ed.) 1288).

(*c*) *Searle v. Price* (*f. c. Searle*), 2 Hag. Con. Rep. 187.

(*d*) *Johnston v. Parker* (*f. c. Johnston*), 3 Phill. 39; *Duins v. Duins* (*otherwise Donovan*), 3 Hag. Eccl. Rep. 301; *Bayard* (*f. c. Morphew*) *v. Bayard*, 2 Phill. 321.

(*e*) See *Miles v. Chilton*, 1 Rob. 684.

(*f*) Dicey, Conf. Law (2nd ed.) 390; *Harvey v. Farnie*, 8 A. C. 43. A "foreign" marriage is one in which the domicile of the husband (at any rate) is not English (see Dicey, Part III. sect. 2).

A prior marriage null and void *ab initio* constitutes no bar to a second marriage, even if no judicial decree has been obtained adjudicating its nullity.

A prior marriage voidable only is a bar to a subsequent marriage, until declared null by judicial decree.

A prior marriage which is neither void nor voidable may be dissolved by the decree of a competent tribunal, or, as in the case of Irish marriages, by private Act of Parliament containing a clause allowing one or both of the spouses to re-marry.

A decree of dissolution of marriage obtained outside England is recognized by the English Courts as entitling either spouse to contract a second marriage there if the tribunal which dissolved the marriage had jurisdiction to entertain the suit for dissolution by reason of the fact that the husband was *bonâ fide* domiciled within its jurisdiction (*g*), or if the divorce was granted under circumstances which would lead the Courts of the husband's domicile to treat it as valid (*h*).

Where such jurisdiction is shown to exist, the English Courts do not now inquire into the grounds of dissolution; nor is it necessary that those should be such as would warrant the dissolution in England of a marriage contracted in England or the dissolution in the country of origin of the spouses of a marriage contracted there (*i*).

The English Courts will take upon themselves to inquire whether the foreign decree of dissolution has been obtained by fraud or collusion between the parties (*k*).

A bar in a foreign decree of dissolution of marriage against the guilty spouse marrying again during the life of the innocent spouse probably would not be recognized by the English Courts as affecting the capacity of the guilty spouse to re-marry in England, if the second spouse were domiciled in England (*l*). But if the guilty spouse was the man, and while domiciled in the country in which his first marriage was dissolved he re-married in any other country than England, the English Courts would be compelled to recognize the invalidity of the second marriage on the principle that the *lex domicilii* governs the capacity of the parties.

(*g*) *Harvey v. Farnie*, 8 A. C. 43; *Lemesurier v. Lemesurier*, (1895) A. C. 517; *Armitage v. Att.-Gen.*, (1906) P. 135.

(*h*) *Armitage v. Att.-Gen.*, *ubi supra*; *Cass v. Cass* (1910), 26 T. L. R. 305.

(*i*) *Bater v. Bater*, (1906) P. 209.

(*k*) *Bater v. Bater*, *ubi supra*.

(*l*) *Scott v. Att.-Gen.*, 11 P. D. 128.

A decree declaring a marriage null would, it seems, be accepted in England as valid—

- (1) If the marriage was celebrated in the country of the tribunal,
or
- (2) If the marriage was celebrated in another country, but the respondent was resident within the jurisdiction of the tribunal granting the decree, such residence not being merely an incident in travel nor taken up for the purposes of the suit (*m*).

It is doubtful whether this rule can be extended so as to entitle a foreign tribunal to declare a marriage contracted in England void for non-compliance with formalities required by English law (*n*).

(*m*) Dicey (2nd ed.), 268, 388; *Johnson v. Cooke* (1898), 2 Ir. Rep. 130; *Roberts v. Brennan*, (1902) P. 143.

(*n*) See *Ogden v. Ogden*, (1908) P. 46.

Part II.



CHAPTER I.

SOLEMNIZATION OF MARRIAGE.

MARRIAGES in England are celebrated either—

(A) In accordance with the rites of the Church of England,
or

(B) Not in accordance with the rites of the Church of England.

(A) A marriage in accordance with the rites of the Church of England must be preceded by (1) publication of banns, or (2) special licence, or (3) Common or Ordinary's licence, or (4) on the registrar's certificate.

(1) *Publication of banns.*

The publication of banns must take place upon three Sundays preceding the solemnization of the marriage in the parish church, or parish churches, of the parties (a).

The publication must be in an audible manner, according to the form of words prescribed by the rubric prefixed to the Office of Matrimony in the Book of Common Prayer during the time of morning service, or of evening service (if there be no morning service), immediately after the second lesson (b).

(a) 4 Geo. 4, c. 76, s. 2 (*post*, p. 72); that is, those parish churches or public chapels in which banns may lawfully be published. These include churches and chapels of newly constituted ecclesiastical districts certified by the bishop as places where marriages should be solemnized (7 & 8 Vict. c. 56, s. 2: *post*, p. 98). This statute validated marriages which had been illegally solemnized in chapels in certain ecclesiastical districts (sect. 3). See also 7 Will. 4 & 1 Vict. c. 22, s. 33 (*post*, p. 95), which authorizes the solemnization of marriage in chapels and churches licensed by the bishop. A bishop may, with the consent of the patron and incumbent, authorize the publication of banns in any public chapel of the parish, or of any chapel situated in an extra-parochial place (4 Geo. 4, c. 76, s. 3); and may license chapels in populous places for the solemnization of marriage (6 & 7 Will. 4, c. 85, s. 26: *post*, p. 86).

(b) Some doubt has arisen as to what is the proper place for publishing banns,

If the parties dwell in different parishes publication is to take place in the church of the parish in which each of the parties dwells (*c*).

In all cases the marriage must be solemnized in the church (or one of the churches) in which the banns were proclaimed (*d*).

All parishes where there is no parish church or chapel belonging thereto, or none wherein divine service is usually solemnized every Sunday, and all extra parochial places whatever having no public chapel wherein banns may be lawfully published, are deemed to belong to any parish or chapelry next adjoining for the purposes of the Marriage Act, 1823, and banns of persons dwelling in such parishes or places may lawfully be proclaimed in the next adjoining parishes (*e*).

After the solemnization of any marriage under a publication of banns it is not necessary in support of such marriage to give any proof of the actual dwelling of the parties in the respective parishes wherein the banns were published, nor may any evidence be received to prove the contrary in any suit touching the validity of such marriage (*f*).

The banns must contain the true Christian names and surnames of the parties (*g*).

The names by which persons are usually known should be used in the publication of banns (*h*).

An illegitimate child has no name except that which it acquires by repute, though usually it takes that of its mother.

If both parties concur in a fraudulent and undue publication of banns, the marriage is null and void (*i*).

Where only one of the parties is guilty of fraud, even the innocent party is not allowed to have the marriage declared null and void (*k*).

If the variation in the name or names is total, that is, the name

whether after the second lesson or immediately before the sentences for the offertory, as the rubric has it; the former time is the one most generally used, and, being statutory, is the more safe.

(*c*) 4 Geo. 4, c. 76, s. 2 (*post*, p. 72).

(*d*) *Ibid.*

(*e*) *Ibid.* sect. 12 (*post*, p. 73).

(*f*) *Ibid.* sect. 26 (*post*, p. 77); *Tree v. Quin*, 2 Phill. 14; *Rex v. Hind*, R. & R. 253.

(*g*) *Ibid.* sect. 7. The true name of the parties is *primâ facie* the native name; but an assumed name may be brought within the description required by the statute. Where there is a name of baptism and a native surname those are the true names, unless they have been overridden by other names assumed and generally accredited (*Wakefield v. Wakefield*, 1 Hag. Con. Rep. 394).

(*h*) *Sullivan v. Sullivan*, 2 Hag. Con. Rep. 238; *Wilson v. Brockley*, 1 Phill. 132, 147.

(*i*) *Rex v. Wroxtton*, 4 B. & Ad. 640; *Wright v. Elwood*, 1 Curt. 662; *Brealy v. Reed*, 2 Curt. 833; *Midgley v. Wood*, 30 L. J. P. M. & A. 57; *Gompertz v. Kensit*, L. R. 13 Eq. 369.

(*k*) *Templeton v. Tyree*, L. R. 2 P. & D. 420.

or names used in the publication is or are totally different from that or those which the parties or one of them ever used, or by which they were ever known, the marriage on such publication is invalid if both parties are cognizant of the undue publication (*l*).

Where the variation is partial, the supposed misdescription is open to explanation (*m*).

A marriage celebrated as if by banns, but without any publication, is regarded as one celebrated without due publication, and so null and void (*n*).

A marriage, however, celebrated without the publication of banns is valid, unless both parties were aware at the time of the ceremony of such want (*o*).

No clergyman is obliged to publish the banns of matrimony between any persons unless seven days at least before the time required for the first publication of such banns respectively, they deliver or cause to be delivered to such clergyman a notice in writing, dated on the day on which the same is so delivered (*p*).

No clergyman is, however, bound to demand such notice (*q*).

No clergyman solemnizing marriage between persons both or one of whom are under the age of twenty-one after banns published is punishable by ecclesiastical censures for solemnizing the marriage without the consent of parents or guardians, unless he had notice of the dissent of the parents or guardians (*r*).

Where the parents or guardians or one of them openly and publicly declare or cause to be declared in the church or chapel where

(*l*) *Brealy v. Reed*, *ubi supra*; *Meddowcroft v. Gregory*, 2 Phil. 365. In an old case (*Rex v. Tibshelf*, 1 B. & Ad. 190) it was held immaterial whether the misdescription arose from accident or design, or whether such design was fraudulent or not. It is, however, submitted that this view of the law might not now prevail, and it is not absolutely clear whether or not if two parties, both of full age, without the intention of committing fraud, choose to marry after publication of banns in names which are not their true names, their marriage will be held null and void (4 Geo. 4, c. 76, s. 22: *post*, p. 75; and see *Holmes v. Simmons*, L. R. 1 P. & D. 523; but see *Midgley v. Wood*, *ubi supra*). Where two minors marry after publication of banns in names which are not true, but with consent of parents or guardians, it may be asked whether such marriage should be held valid (*per* Lord Penzance in *Holmes v. Simmons*, *ubi supra*). The tendency of the Courts would be to uphold it, as the element of fraud and the evasion of the rights of those whose consent is required would be absent.

(*m*) *Pouget v. Tomkins*, 2 Hag. Con. Rep. 142; 3 M. & S. 262, n.

(*n*) 4 Geo. 4, c. 76, s. 22 (*post*, p. 75); *Wright v. Elwood*, *ubi supra*.

(*o*) *Greaves v. Greaves*, L. R. 2 P. & D. 432.

(*p*) 4 Geo. 4, c. 76, s. 7 (*post*, p. 73). The notice shall be—(i) Of their true Christian names and surnames; (ii) of the house or houses of their respective abodes within their parish or chapelry; (iii) and of the time during which they have dwelt, inhabited, or lodged in such house or houses.

(*q*) He should, however, take reasonable precautions that the publication of banns should be due and proper; and if he be aware of a false description of residence he ought not to proceed (*Sullivan v. Sullivan*, 2 Hag. Con. Rep. 238). If he marries persons non-resident in his parish, and does not use diligence in his inquiries about them, he is liable to ecclesiastical censures (*Nicholson v. Squires*, 16 Ves. 259).

(*r*) 4 Geo. 4, c. 76, s. 8 (*post*, p. 73).

the banns are published at the time of publication his, her, or their dissent to such marriage, the publication is absolutely void (*s*).

If the marriage is not had within three months after the publication of banns, it will not be valid unless they have been re-published in a proper and legal method (*t*), or the marriage is celebrated in some other manner.

Where one party to a marriage celebrated in England is resident in Scotland, and the banns of such party are proclaimed according to Scottish law or custom in the parish or place in which he or she is resident, such marriage in England is not rendered invalid only by reason of such publication being in accordance with the Scottish and not the English method (*u*).

(2) *Special Licence.*

A special licence (which is granted solely by the Archbishop of Canterbury) (*x*) enables the parties who obtain it to dispense with the necessity of residing in any particular place before its grant, and to be married at any time or place within three months from the date of the issue. The same form of affidavit is required as for the common or Ordinary's licence (*y*).

(3) *Common or Ordinary's Licence.*

This licence is obtained from the vicars-general, appointed by the Archbishops of Canterbury and York for their respective provinces, and from the chancellors and surrogates appointed by the bishops for the respective dioceses (*z*).

Marriage on this licence must be celebrated in no other church or chapel than in the parish church, or in some public chapel of or belonging to the parish or chapelry within which the usual place of abode of one of the parties to be married has been for the space of fifteen days immediately before the granting of the licence (*a*).

(*s*) *Ibid.*

(*t*) *Ibid.* sect. 9 (*post*, p. 73).

(*u*) 49 & 50 Vict. c. 3, s. 1 (*post*, p. 118).

(*x*) When the supremacy of the See of Rome in this country ceased to be recognized, its legatine jurisdiction of granting dispensations, faculties and licences was reserved to the Archbishop of Canterbury by 25 Hen. 8, c. 21, s. 4 (*post*, p. 61). This privilege was reserved to him by 4 Geo. 4, c. 76, s. 20 (*post*, p. 75), and by 6 & 7 Will. 4, c. 85, s. 1 (*post*, p. 82).

(*y*) See *post*, p. 23. This licence is obtainable only at the Faculty Office, Knighttrider Street, Doctors' Commons, E.C. For the wider powers of the Irish Church, bishops and heads of denominational bodies in Ireland under 33 & 34 Vict. c. 110, ss. 36, 37, and 34 & 35 Vict. c. 49, s. 21, see *post*, pp. 37, 38, 39, 41, 43, 44 and 45.

(*z*) These surrogates must take oaths of office and give security in a bond of 100*l.* to the bishop of the diocese for the due and faithful execution of their office (4 Geo. 4, c. 76, s. 18: *post*, p. 75).

(*a*) 4 Geo. 4, c. 76, s. 10 (*post*, p. 73).

The oath to be taken before the surrogate, &c., by one of the parties previous to the granting of the licence is to the following effect:—(i) That there is no impediment of kindred or alliance, or of any other lawful cause, nor any suit commenced (in the Probate, Divorce and Admiralty Division of the High Court of Justice) to bar or hinder the proceeding of the said matrimony according to the tenour of the licence. (ii) That one of the parties hath for the space of *fifteen* days immediately preceding the application for the licence had his or her usual place of abode within the parish or chapelry within which such marriage is to be solemnized. (iii.) That where either of the parties, not being a widower or widow, shall be under the age of twenty-one years, the consent of the person or persons whose consent to such marriage is required has been obtained thereto (b).

If there shall be no such person or persons having authority to give such consent, then, upon oath made to that effect by the party requiring such licence it shall be lawful to grant such licence notwithstanding the want of any such consent (c).

It may not be required of any person applying for any such licence to give any caution or security by bond or otherwise before the licence is granted (d). A false Christian name or surname in a licence does not render the marriage celebrated on it void (e); and a misdescription, unless fraudulent, will not invalidate a marriage (f); nor will a partial departure from the true name of one of the parties to a marriage in a licence obtained in the altered name by the other party, though for the purpose of concealing the intended marriage, if the altered name may represent the person, and if the licence had been obtained for and by the direction of that person (g).

The guilty and fraudulent knowledge of both parties must be proved before a marriage celebrated on a licence obtained from a person not having authority to grant it will be rendered void (h).

Where parties marry without a licence, and both at the time of the ceremony are unaware of its absence, the marriage is valid (i).

(b) *Ibid.* sect. 14 (*post*, p. 74).

(c) Proviso to sect. 14.

(d) *Ibid.* sect. 15 (*post*, p. 74).

(e) *Rex v. Burton-upon-Trent*, 3 M. & S. 537. A false statement on oath before a surrogate is not indictable as perjury (*Rex v. Forster*, R. & R. 459); but if made to procure a marriage (whether celebrated or not) is a common law misdemeanour (*Reg. v. Chapman*, 18 L. J. M. C. 152).

(f) *Ewing v. Wheatley*, 2 Hag. Con. Rep. 175, 184.

(g) *Bevan (f. c. McMahon) v. McMahon*, 30 L. J. P. & M. 61; *Plummer v. Plummer* (1917) P. 163, 167.

(h) *Dormer v. Williams*, 1 Curt. 870.

(i) *Greaves v. Greaves*, L. R. 2 P. & D. 432.

A caveat may be entered against the licence, which is not to issue until such caveat has been withdrawn, or it has been decided by the proper person that it ought not to obstruct the grant of the licence (*k*).

Unless a marriage on this licence takes place within three months from the date of its issue, it is not to be solemnized until a new one be obtained, or the parties married with other legal formalities (*l*).

(4) *On the Superintendent Registrar's Certificate (m).*

The certificate of the superintendent registrar may be used and stand instead of the publication of banns where no such publication has taken place (*n*). But it is only optional and not obligatory on the part of the clergy of the Church of England to marry persons who have obtained this certificate (*o*).

The registrar is not empowered to issue his certificate for such marriage unless one of the parties resides in the parish or district in the church of which the marriage is to take place, and the church itself is within the district of the superintendent registrar (*p*).

Where persons wilfully intermarry without licence from a person or persons having authority to grant the same first had and obtained, or knowingly and wilfully consent to or acquiesce in the solemnization of marriage by any person not being in holy orders, such marriage shall be null and void (*q*).

Presence of a duly Ordained Minister.

The presence of a duly ordained minister of the Church of England is necessary to the validity of marriages solemnized in accordance with the rites of the Church of England (*r*).

A clergyman cannot validly marry himself; some other clergyman must perform the ceremony (*s*).

It has not been clearly laid down whether a marriage performed by a person who holds himself out to be a properly ordained clergy-

(*k*) 4 Geo. 4, c. 76, s. 11 (*post*, p. 73).

(*l*) 4 Geo. 4, c. 76, s. 19 (*post*, p. 74).

(*m*) The method of obtaining this certificate will be treated of lower down. See *post*, p. 31.

(*n*) 6 & 7 Will. 4, c. 85, ss. 1, 16 (*post*, pp. 81, 84); 7 Will. 4 & 1 Vict. c. 22, ss. 1, 36 (*post*, pp. 94, 96).

(*o*) 19 & 20 Vict. c. 119, s. 11 (*post*, p. 108).

(*p*) 7 Will. 4 & 1 Vict. c. 22, s. 36 (*post*, p. 96).

(*q*) See *Hawke v. Corri*, 2 Hag. Con. Rep. 280.

(*r*) *Reg. v. Millis*, 10 Cl. & F. 534; *Catherwood v. Caslon*, 13 L. J. Ex. 433; *Culling v. Culling*, (1896) P. 116. "Per presbyterum sacris ordinibus constitutum" (Cripps, *Law of the Church and Clergy*, 636).

(*s*) *Beamish v. Beamish*, 9 H. L. Cas. 274.

man of the Church of England, but in reality is no clergyman at all, is valid (*t*), and the Courts have avoided deciding the question (*u*). If both parties go through the ceremony of marriage before a person whom they know not to be a duly ordained minister, their marriage will be void (*x*).

All marriages, except those on the special licence, must be celebrated in church between the hours of eight in the morning and three in the afternoon (*y*), and all marriages must be celebrated in the presence of two or more witnesses besides the clergyman.

The parties must be married in the church or chapel in which the banns have been proclaimed, or which has been mentioned in the licence, unless dispensed with by a special licence (*z*); but a marriage solemnized in a vestry which forms part of the church is good (*a*).

(B) Marriages not in accordance with the rites of the Church of England:

(1) These marriages may be solemnized in chapels or places of worship of religious bodies (other than the Church of England) which are registered buildings (*b*) certified (*c*) to be set apart for religious purposes by the governing body or trustees of the building (*d*). Before a marriage can take place in a registered building

(*t*) Lord Stowell (in *Hawke v. Corri*, 2 Hag. Con. Rep. 288) and Sir R. Phillimore (Eccl. Law, 804, 805) were of opinion that if the parties were ignorant of the imposture the marriage should be upheld. But against that view must be set the decision of the House of Lords in *Reg. v. Millis* (10 Cl. & F. 534) and the language of 4 Geo. 4, c. 76, s. 22 (*post*, p. 75); and see 51 & 52 Vict. c. 28, a validation Act passed in consequence of the conviction of a sham parson: *Reg. v. Ellis*, 16 Cox, C. C. 469.

(*u*) *Rex v. Luffington*, Burr. Sett. Cas. 232.

(*x*) 4 Geo. 4, c. 76, s. 22 (*post*, p. 75).

(*y*) 49 & 50 Vict. c. 14 (*post*, p. 119).

(*z*) 4 Geo. 4, c. 76, s. 22.

(*a*) *Wing (f. c. Taylor) v. Wing*, 30 L. J. P. & M. 258.

(*b*) Before a building is registered as a place of religious worship it must have been certified to the superintendent registrar by a body of respectable persons that it has been used by them during at least the twelve months previous to its registration as their usual place of religious worship, and that it is their desire that it should be so registered (6 & 7 Will. 4, c. 85, s. 18: *post*, p. 84). This user of a year is not required in the case of a new building when the original building has been disused, and the new one has been so set apart (*ibid.* sect. 19). It must be a separate building, except in the case of a Roman Catholic chapel under the same roof with another building, or which forms part only of a building, if used exclusively as a chapel for at least one year previous to its registration (7 Will. 4 & 1 Vict. c. 22, s. 35: *post*, p. 96).

(*c*) All places of meeting for religious worship of Protestant Dissenters, or other Protestants, or Roman Catholics, or Jews, may be certified to and registered by the Registrar-General in writing through the different district superintendent registrars. On such certificate the Registrar-General shall register and record such building (18 & 19 Vict. c. 81, s. 2: *post*, p. 101); and when a building so certified shall be disused as a place of religious worship its disuse shall be likewise recorded (*ibid.* sect. 6: *post*, p. 102).

(*d*) The application for registration of a separate building certified according to law must be made by the proprietor or trustee, together with a certificate signed by at least twenty householders and himself that such building has been used by them during one year at least as their usual place of public religious worship (6 & 7 Will. 4, c. 85, s. 18: *post*, p. 84). In the case of Roman Catholics the trustees or governing body

the contracting parties must first obtain the consent of the minister or of one of the trustees, owners, deacons, or managers thereof (*t*).

A marriage in a building not certified and registered according to law will be invalid, but proof of such actual certification is not necessary to support any marriage after its solemnization (*u*).

(1) *In the presence of a Registrar of Marriages.*

Parties who are desirous of having the attendance of a registrar of marriages (*x*), or a deputy registrar of marriages (*y*) at their marriage in a certified registered building can insist on his presence, though it is not now necessary to the validity of their marriage if the provisions of the Marriage Act, 1898 (61 & 62 Vict. c. 58), are complied with (*z*).

(2) *In the presence of an authorized person.*

This person must be certified as having been duly authorized for the purpose by the trustees or other governing body of the building or of some registered building in the same registration district *without* the presence of a registrar of marriages (*a*).

When the contracting parties have complied with all the legal includes the bishop or vicar-general of the diocese (61 & 62 Vict. c. 58, s. 1 (3) : *post*, p. 133). The cost of this certificate is 3*l*. (6 & 7 Will. 4, c. 85, s. 18 : *post*, p. 84).

(*t*) 19 & 20 Vict. c. 119, s. 11 (*post*, p. 108).

(*u*) *Ibid.* sect. 17 (*post*, p. 109).

(*x*) A registrar of marriages is an officer appointed either by the Registrar-General or the district superintendent registrar (6 & 7 Will. 4, c. 86, s. 7 ; 19 & 20 Vict. c. 119, s. 15 : *post*, p. 109), and when appointed holds office during the pleasure of the appointor, whoever he may be (*Ibid.*). Every district ought to have at least one registrar of marriages. The appointment of this officer by a district superintendent registrar must receive the approval of the Registrar-General, who can limit the number of registrars to be appointed to any one district (19 & 20 Vict. c. 119, s. 15). The duties of a registrar of marriages include acting as attesting witness ; assisting persons in filling up notices of marriage when applied to for the purpose ; attending all marriages at which his presence is required and of which he has received notice at a reasonable time beforehand from the parties ; examining carefully the certificate (or certificates, if the parties dwell in different districts) or the licence to see that it is regular ; taking care that in some part of the ceremony the statutory declaration and words of contract are said by each party in his presence and that of the witnesses. For every marriage under the Marriage Act, 1836, solemnized in his presence he is entitled to have from the parties married 10*s.*, if the marriage shall be by licence, and otherwise 5*s.* (6 & 7 Will. 4, c. 85, s. 22 : *post*, p. 86).

(*y*) This officer can be appointed by a registrar of marriages to act as his deputy in the case of his illness or unavoidable absence, but the appointment must be approved by the Registrar-General. Every such deputy while so acting has all the powers and duties of a registrar. He holds his office during the pleasure of his appointor, who is civilly responsible for his acts and omissions, and is removable by the Registrar-General. In case any registrar of marriages dies, or otherwise ceases to hold his office, his deputy becomes the registrar in his place until another appointment is made and notified to him, and while so acting is vested with the same powers and duties, and is subject to the same provisions and penalties, as any other registrar of marriages (19 & 20 Vict. c. 119, s. 16 : *post*, p. 109).

(*z*) 61 & 62 Vict. c. 58, ss. 5 (1), 10 (*post*, pp. 133, 135).

(*a*) 61 & 62 Vict. c. 58, s. 6 (3) (*post*, p. 134). Where a person has been authorized in respect of any registered building, it is the duty of the trustees or governing body of that building to forward a certificate of such authorization to the Registrar-

requirements and do not give notice to the superintendent registrar (when the notice of marriage (*b*) is given to him) that they require the presence of a registrar at their marriage, the superintendent registrar shall (subject to the provisions of the Marriage Act, 1898) issue to one of the parties a certificate or certificate and licence (as the case may require), in accordance with schedules B. and C. of the Marriage Act, 1856 (*c*).

The contracting parties must deliver to the authorized person the certificate or certificate and licence required by law (*d*).

The authorized person (whether a registrar of marriages be present or not) must require the delivery to him of the licence (if the marriage be by licence), or certificate (if on a certificate) or certificates, if the contracting parties dwell in different districts (*e*).

There must be at least two witnesses to the marriage, besides the authorized person or minister (*f*).

During some part of the ceremony the contracting parties must repeat the following words: "I do solemnly declare that I know not of any lawful impediment why I, —, may not be joined in matrimony to —," and "I call upon these persons here present to witness that I, —, do take thee, —, to be my lawful wedded wife [*or* husband]" (*g*), or "I, —, do take thee, —, to be my wedded wife [*or* husband]" (*h*).

If one or both of the parties is or are Welsh, and prefers or prefer not to speak English, the authorized translation of the foregoing forms of words into Welsh may be used throughout Wales and in all places where the Welsh tongue is commonly used (*i*).

(3) *In the office of the Superintendent Registrar.*

Contracting parties who do not desire to be married with any religious service at all may be married at the office (*k*) and in the presence of the superintendent registrar (*l*), and of some registrar of the district, and in the presence of two witnesses with open doors, between 8 a.m. and 3 p.m., making the

General and the superintendent registrar of the district in which the building is situate (*Ibid.* (4)).

(*b*) For the requisites of this notice, see *post*, p. 31.

(*c*) 61 & 62 Vict. c. 58, s. 5 (1) (*post*, p. 133).

(*d*) *Ibid.* sect. 7 (1) (*post*, p. 134).

(*e*) 6 & 7 Will. 4, c. 85, s. 16 (*post*, p. 84).

(*f*) *Ibid.* sect. 15 (*post*, p. 84); 61 & 62 Vict. c. 58, s. 6 (2) (*post*, p. 134). If a marriage registrar be present he could act as a witness, for he is present rather as a witness than an official.

(*g*) 6 & 7 Will. 4, c. 85, s. 20 (*post*, p. 85).

(*h*) 61 & 62 Vict. c. 58, s. 6 (1) (*post*, p. 134).

(*i*) 6 & 7 Will. 4, c. 85, s. 23 (*post*, p. 86); 61 & 62 Vict. c. 58, s. 14 (*post*, p. 135).

(*k*) This office (called a register office) is to be provided by the Poor Law Guardians of the union or parish or place having a board of guardians (6 & 7 Will. 4, c. 86, s. 9).

(*l*) This officer is appointed by the Poor Law Guardians for his district, and is

declaration and using the form of words prescribed for marriage in a registered building (*m*). No religious ceremony may be used in a marriage at the superintendent registrar's office; but the parties, on production of the registrar's certificate, may afterwards add the religious ceremony which they desire at a place of worship of their persuasion with the assent of the minister or other person controlling the church in which the ceremony is performed (*n*).

(4) *Marriages of Quakers.*

Marriages celebrated according to the rites of Quakers may be on either the registrar's certificate or licence (*o*) after the usual and proper notice has been given.

The persons to be married may be both Quakers, or only one a Quaker, or neither of them a Quaker. When one or both of the parties does or do not belong to the Society of Friends, the notice to the registrar must always be accompanied by a certificate signed by some registering officer of the Society of Friends, to the effect that the party by whom or on whose behalf such notice is given, or each such party (as the case may be), is authorized thereto in pursuance of some general rule or rules of the said society (*p*).

The parties must be married within three months from the date of the issue of the certificate or licence, but not necessarily in the

subject to the regulations and holds office during the pleasure of the Registrar-General. If the guardians do not appoint the Registrar-General may appoint him (7 Will. 4 & 1 Vict. c. 22, s. 14). The superintendent registrar may appoint a deputy (*Ibid.* sect. 16).

The principal duties of the superintendent registrar in connection with marriages consist in receiving and entering notices, issuing certificates, granting licences, deciding on caveats, being present at marriages solemnized in the register office, and procuring the registry of buildings for the solemnization of marriages therein. The appointment of registrars of marriages is made by him, subject to the approval of the Registrar-General. For his various duties he is entirely remunerated by the fees prescribed under the statutes (see 6 & 7 Will. 4, c. 85, ss. 5, 13, 18, 19, 34; 19 & 20 Vict. c. 119, ss. 3, 4, 9). Before he can grant any licence for marriage he must give security by his bond in the sum of 100*l.* to the Registrar-General for the due and faithful execution of his office (6 & 7 Will. 4, c. 85, s. 11).

If he knowingly and wilfully issues a certificate or licence for marriage before the expiration of the required term of notice, or after three months from the date of the entry of the notice, or when the issue of the certificate has been forbidden, or solemnizes in the register office any marriage declared by the Act to be null and void, he is guilty of felony (*Ibid.* sect. 40: *post*, p. 89).

The office is open daily (except on Sundays, Christmas Day and Good Friday) during reasonable hours. For marriages at the office a special appointment must be made beforehand to ensure the attendance of the superintendent registrar as well as of the registrar of marriages. The superintendent registrar is not obliged to open his office on Sundays, though he may do so for the purpose of celebrating a marriage. For his duties, &c. as to issuing certificates and licences, see *post*, p. 32.

(*m*) 6 & 7 Will. 4, c. 85, s. 21 (*post*, p. 85); 49 & 50 Vict. c. 14, s. 1 (*post*, p. 119).

(*n*) 19 & 20 Vict. c. 119, s. 12 (*post*, p. 108).

(*o*) 6 & 7 Will. 4, c. 85, s. 2 (*post*, p. 82); 19 & 20 Vict. c. 119, s. 21 (*post*, p. 108).

(*p*) 35 & 36 Vict. c. 10, s. 1 (*post*, p. 117), which repealed the proviso in 23 & 24 Vict. c. 18, s. 1, requiring profession with, if not membership of, the society on the part of both persons intending to be so married.

district or either of the districts in which they dwell (*q*), according to the rites of Quakers, in the presence of some registering officer of the society, and of two other witnesses.

(5) *Marriages of Jews (r)*.

The marriages of persons professing the Jewish religion may be celebrated in accordance with the usages of that faith, if both parties to the marriage profess the Jewish religion (*s*).

The question of the validity or invalidity of Jewish marriages is settled by the laws prevailing among the Jews, and evidence of such will be admitted in the English Courts (*t*), and if it prove that the parties are not married by Jewish law, the marriage will be held invalid (*u*).

A marriage between Jews solemnized according to the rites and ceremonies prevailing among Christians must be in conformity with the regulations of the Marriage Acts (*x*).

The capacity of domiciled English Jews to contract marriage is regulated by the laws of England, and such Jews are affected by the Table of Prohibited Degrees (*y*).

Due notice to the superintendent registrar must be given, and after such notice marriage may take place either on his certificate or licence (*z*).

It is not necessary that a Jewish marriage should be celebrated in a synagogue (*a*).

The marriage should be celebrated in the presence of the certified secretary of the husband's synagogue, who should be the registering officer (*b*). But the presence of the secretary is not absolutely necessary (*c*).

(*q*) 3 & 4 Vict. c. 72, s. 5 (*post*, p. 97).

(*r*) The Jewish law regarding Jewish marriages was at one time regarded as foreign, and had to be proved, where necessary, by evidence.

(*s*) 6 & 7 Will. 4, c. 85, s. 2 (*post*, p. 82).

(*t*) See *Goldsmid v. Bromer*, 1 Hag. Con. Rep. 324; *Henriques, Jewish Marriages and English Law*, 44, 51.

(*u*) *Lindo v. Belisario*, 1 Hag. Con. Rep. 216, 244.

(*x*) *Jones v. Robinson*, 2 Phill. 285.

(*y*) *Ante*, p. 14. See *Re De Wilton, De Wilton v. Montefiore*, (1900) 2 Ch. 481.

(*z*) 6 & 7 Will. 4, c. 85, s. 2; 7 Will. 4 & 1 Vict. c. 22, s. 1; 19 & 20 Vict. c. 119, ss. 21, 23. There is some controversy as to whether the giving of the notice and the obtaining the certificate are conditions precedent to the validity of the marriage (6 & 7 Will. 4, c. 85, ss. 2, 4, 42; 19 & 20 Vict. c. 119, s. 23; *Henriques*, 27, 31; *Nathan v. Woolf*, 15 T. L. R. 250). It has been suggested (*Nathan v. Woolf*, 15 T. L. R. 250) that if Jews competent to marry go through the proper matrimonial rites and ceremonies in England, but have wilfully abstained from giving the notice mentioned in the text, the marriage would be upheld by the Courts, but it is more than doubtful whether such view would prevail (see 6 & 7 Will. 4, c. 85, ss. 2, 16, 42; *Henriques*, 7, 31, 32).

(*a*) It may be celebrated in a house. In 1909 such a marriage was celebrated at the Trocadero Restaurant.

(*b*) 6 & 7 Will. 4, c. 86, s. 31 (*post*, p. 91).

(*c*) *Ibid*.

If the parties are living in different places, but the marriage is to be celebrated in the place where the woman resides, the man must qualify himself as a member of the woman's synagogue (*d*).

The essential parts of the Jewish ceremony of marriage are the putting of the ring by the bridegroom on the finger of the bride while pronouncing the words: "Thou art married to me by the law of Moses," and that this should take place in the presence of two competent witnesses (*e*). The presence of a rabbi or minister of religion is not essential (*f*).

The written contract of marriage is not an essential part of the Jewish ceremony of marriage (*g*).

A Jewish marriage must take place within three months of the issue of the registrar's certificate or licence (*h*).

Jewish synagogues are not registered under sect. 18 of the Marriage Act, 1836, and the Marriage Act, 1898 does not apply to synagogues (*i*), nor does the civil registrar attend Jewish marriages.

General Provisions affecting Marriages celebrated not in accordance with Rites of Church of England.

The lawful time for solemnizing marriage among Nonconformists is between 8 a.m. and 3 p.m. (*k*).

The issuing of a certificate or licence may be forbidden by any person authorized to do so (*l*).

A marriage not had within three months of the issuing of a certificate or licence is void (*m*).

A marriage knowingly and wilfully had without due notice to the registrar is void (*n*).

Notice of Marriage.

(A) In case of marriages celebrated in accordance with the rites of the Church of England.

1. *Banns*.—No notice of marriage by publication of banns other than the mere publication of an intention of such marriage is by

(*d*) See Hammick, *Law of Marriage* (1st ed.), 216; Geary, *Marriage and Family Relations*, 97—102.

(*e*) Henriques, pp. 43, 44; *Lindo v. Belisario*, 1 Hag. Con. Rep. 216.

(*f*) Hammick, *Law of Marriage* (1st ed.), 369, *per* Dr. H. Adler.

(*g*) Henriques, p. 48; *R. v. Althausen*, 17 Cox, 630; *R. v. Nassilski*, 61 J. P. 520, relate to marriages celebrated abroad, and are not good law, at any rate, as to marriages in England (see *Lindo v. Belisario*, 1 Hagg. Con. Rep. 227—230, Lord Stowell; *Nathan v. Woolff*, 15 T. L. R. 250, more fully stated in Henriques, 48).

(*h*) 6 & 7 Will. 4, c. 85, s. 15 (*post*, p. 84).

(*i*) See *post*, p. 135, and Henriques, 38, 40.

(*k*) 49 & 50 Vict. c. 14 (*post*, p. 119).

(*l*) 6 & 7 Will. 4, c. 85, ss. 9, 13 (*post*, p. 83).

(*m*) 19 & 20 Vict. c. 119, s. 9 (*post*, p. 107).

(*n*) 6 & 7 Will. 4, c. 85, s. 42 (*post*, p. 89).

statute obligatory. But the parson, vicar, minister or curate may require of the persons to be so married seven days at least before the first publication a notice in writing dated on the day on which the same shall be so delivered of their true Christian names and surnames, and of the house or houses of their respective abodes within the parish or chapelry, and of the time during which they have dwelt, inhabited or lodged in such house or houses respectively (*o*).

2. *Common or Ordinary's Licence*.—The notice to be given by a person desirous of being married on this licence, whether granted by archbishop, bishop or other ordinary or person having authority to grant the same, is to be given in the form of an oath sworn before a surrogate or a person having authority to grant the same (*p*).

3. *The Superintendent Registrar's Certificate* (*q*).

(B) In case of marriages not celebrated in accordance with the rites of the Church of England.

1. *The Superintendent Registrar's Certificate*.—Persons desirous of obtaining this certificate must give to the superintendent registrar, or respective superintendent registrars (as the case may be), in whose district or districts they must have lived for at least seven days before the application is made a notice containing (a) the name and surname; (b) the profession or condition of each of the parties intending marriage; (c) the dwelling-place of the party giving the notice; (d) the time during which he or she has dwelt therein; (e) and the church or other building in which the marriage is to be solemnized (*r*).

This notice must be accompanied by a solemn declaration in writing made by the person so giving it, that he or she believes that there is no impediment of kindred or alliance or other lawful hindrance to the marriage, and that the parties have for the space of seven days immediately preceding the giving of such notice had their usual place of abode and residence within the district of the superintendent or respective superintendent registrars, to whom

(*o*) 4 Geo. 4, c. 76, s. 7 (*post*, p. 73).

(*p*) 4 Geo. 4, c. 76, ss. 10, 14 (*post*, pp. 73, 74). The oath must contain the following statements:—That there is no impediment of kindred or alliance, or of any other lawful cause, nor any suit commenced in the Probate, Divorce and Admiralty Division of the High Court of Justice, to bar or hinder the proceeding of the said matrimony, according to the tenour of the said licence; and that one of the said parties hath for the space of fifteen days immediately preceding such licence had his or her usual place of abode within the parish or chapelry within which such marriage is to be solemnized; if either party, not a widower or widow, is under twenty-one that the consent of the proper party to the marriage has been obtained, unless there is no such person in existence.

(*q*) See *infra*, (B) 1.

(*r*) 6 & 7 Will. 4, c. 85, s. 4 (*post*, p. 82). Provided, that if either party shall have dwelt in the place stated in the notice during more than one calendar month it may be stated therein that he or she hath dwelt there one month and upwards.

such notice or notices (as the case may be) shall be so given; and if either party not a widower or widow is under twenty-one, that the consent of the proper party or parties to the marriage has been given (*s*).

This notice must be suspended or affixed in some conspicuous place in the office of the superintendent registrar twenty-one consecutive days next after the entry in the marriage notice book (*t*).

Unless forbidden, the issue of the certificate is made twenty-one successive or clear days after the day of entry of the notice (*u*) by the superintendent registrar to whom the notice was given (*x*), and the certificate will hold good for three months from the date of its issue (*y*).

2. *The Superintendent Registrar's Licence*.—Persons desirous of obtaining this licence must give to the superintendent registrar the same notice as for a certificate. The affidavit accompanying the notice must, however, state that one of the parties has had his or her usual place of abode or residence in the district of the superintendent registrar to whom the notice is given for at least fifteen days immediately preceding the giving of the notice (*z*).

If the parties live in different districts, notice need be given to the superintendent registrar of only one district, and only the party giving notice need state how long he or she has had his or her usual place of abode in the district (*a*).

The notice need not be suspended in the office (*b*).

Unless forbidden, the issue of the licence may be made by the superintendent registrar who granted it after the expiration of one whole day next after the date of the entry in the marriage notice book (*c*), and the licence will hold good for three months from the date of its issue (*d*).

Every person who shall knowingly and wilfully make any false declaration or sign any false notice or certificate for the purpose of procuring any marriage under the Marriage Acts, 1836, 1840, or 1856, shall suffer the penalties of perjury (*e*) and a forfeiture of property accruing to the offending party by the marriage in a suit by the Attorney- or Solicitor-General (*f*).

(*s*) 19 & 20 Vict. c. 119, s. 2 (*post*, p. 105).

(*t*) *Ibid.* sect. 4 (*post*, p. 106).

(*u*) *Ibid.*

(*x*) *Ibid.* sect. 2 (*post*, p. 105).

(*y*) 6 & 7 Will. 4, c. 85, s. 15 (*post*, p. 84); 19 & 20 Vict. c. 119, s. 9 (*post*, p. 107).

(*z*) 19 & 20 Vict. c. 119, s. 2 (*post*, p. 105).

(*a*) *Ibid.* sects. 2, 6 (*post*, pp. 105, 106).

(*b*) *Ibid.* sect. 4.

(*c*) *Ibid.* sect. 9.

(*d*) *Ibid.*

(*e*) *Ibid.* sects. 2, 18 (*post*, pp. 105, 107).

(*f*) *Ibid.* sect. 19 (*post*, p. 110).

If persons knowingly and wilfully intermarry without due notice to the superintendent registrar, or without a certificate of notice duly issued, the marriage is null and void (*g*).

Registration of Marriages.

(A) In case of marriages celebrated in accordance with the rites of the Church of England.

Every clergyman immediately after every office of matrimony solemnized by him shall register in duplicate the several particulars relating to that marriage according to the form required by the Registration Act, 1836 (*h*).

Every entry shall be signed by the clergyman, by the parties married, and by two witnesses, and be made in order from the beginning to the end of each book, and the number of the place of entry in each duplicate marriage register book shall be the same (*i*).

No alteration in or addition to a marriage register can be lawfully made after the entry has been completed. Errors in such register may, however, be corrected within one calendar month after their discovery in the prescribed statutory manner (*k*).

During the repair or rebuilding of a parish church, marriage may be solemnized in the church of an adjoining church or chapelry. In such a case the marriages from the parish of which the church is under repair or being rebuilt should be entered in the register books of such parish, and not in those of the adjoining parish or chapelry (*l*).

A marriage by special licence solemnized in a private house, chapel, or place in which marriages are not usually solemnized, must be registered in the marriage registers of the parish in which such house, &c. is situated (*m*).

Persons, after being married civilly before the registrar at his office, may add the religious ceremony at a church, and the clergyman of such church may, after notice given to him, and on production of the registrar's certificate, perform the religious marriage ceremony as supplemental to, but not in supersession of the

(*g*) 6 & 7 Will. 4, c. 85, s. 42 (*post*, p. 89). When a notice is given for the purposes of fraud in a wholly false name it may be doubted whether that is a notice at all (see *Holmes v. Simmons*, L. R. 1 P. & D. 523).

(*h*) 6 & 7 Will. 4, c. 86, s. 31 (*post*, p. 91).

(*i*) *Ibid.*

(*k*) *Ibid.* sect. 44 (*post*, p. 93).

(*l*) See 4 Geo. 4, c. 76, s. 13 (*post*, p. 73). Hammick (1st ed.), p. 231.

(*m*) See Hammick (1st ed.), p. 231.

religious ceremony. This religious ceremony is not to be registered as a marriage (*n*).

(B) In case of marriages not celebrated in accordance with the rites of the Church of England.

1. *Marriages in the presence of the Registrar of Marriages.*—Whether the marriage takes place in his office or in a registered place of worship, the registrar of marriages, immediately after every marriage solemnized in his presence, is to register the same in his marriage register book (*o*), and every entry of such marriage is to be signed by the minister by or before whom the marriage shall have been solemnized—if there be any such person—and by the registrar, and also by the persons married, and attested by two witnesses; and every such entry is to be made in order from the beginning to the end of the book (*p*).

2. *Marriages in a registered building in the presence of an authorized person.*—The authorized person in whose presence the marriage is solemnized, shall immediately after the marriage register in duplicate in two of the marriage register books provided for the purpose the several particulars relating to the marriage according to the form in Schedule C. annexed to the Births and Deaths Registration Act, 1836, and every such entry shall be signed by the authorized person, and by the parties to the marriage, and by two witnesses (*q*).

3. *Marriages of Quakers.*—Every registering officer of the Quakers, as soon as conveniently may be after the solemnization of any marriage between two Quakers in the district for which he is registering officer, shall register or cause to be registered in duplicate in two of the marriage register books the several particulars relating to the marriage according to the form in Schedule C. annexed to the Births and Deaths Registration Act, 1836 (*r*). And every registering officer, whether he shall or shall not be present at the marriage, shall satisfy himself that the proceedings in relation thereto have been conformable to the usages of the society; and every such entry shall be signed by the registering officer and by the parties married and by two witnesses (*s*).

4. *Marriages of Jews.*—Every secretary of a synagogue, immediately after every marriage solemnized between any two persons

(*n*) 19 & 20 Vict. c. 119, s. 12 (*post*, p. 108).

(*o*) According to the form prescribed by 6 & 7 Will. 4, c. 86 (*post*, p. 90).

(*p*) 6 & 7 Will. 4, c. 85, s. 23 (*post*, p. 86).

(*q*) 61 & 62 Vict. c. 68, s. 7 (*post*, p. 134).

(*r*) 6 & 7 Will. 4, c. 86, s. 31 (*post*, p. 91).

(*s*) *Ibid.*

professing the Jewish religion, of whom the husband shall belong to the synagogue whereof he is secretary, is required to register or cause to be registered in duplicate in two of the marriage register books the several particulars relating to the said marriage, according to the form in Schedule C. annexed to the Births and Deaths Registration Act, 1836. Every such secretary, whether he shall or shall not be present at such marriage, is to satisfy himself that the proceedings in relation thereto have been conformable to the usages of persons professing the Jewish religion. Every such entry must be signed by the secretary of the synagogue, by the parties married, and by two witnesses (*t*).

Under the Naval Marriages Act, 1908 (*u*), where one of the parties to a marriage intended to be solemnized in *England* after the publication of banns is an officer, seaman, or marine borne on the books of one of H. M. ships at sea, the banns may be published on three successive Sundays at morning service on board that ship by the chaplain, or if there is no chaplain, by the captain or other officer commanding the ship. The person so publishing the banns shall give a certificate of publication, unless they have been forbidden (*x*). Where such marriage is intended to be solemnized otherwise than in accordance with the rites of the Church of England, such officer, seaman, or marine may give notice of his intention to the proper officer, together with the name and address of the other party to the marriage, with such other information as may be necessary to enable the proper officer to fill up a certificate under the Act, and shall at the same time make and sign the declaration required by the Marriage and Registration Act, 1856 (*y*). Thereupon the proper officer shall issue a certificate to such officer, seaman or marine (*z*).

Such certificate shall be in a prescribed form, and shall have like force and effect as a certificate of publication of banns, or that of a superintendent registrar of marriages under the Marriage and Registration Act, 1856 (*a*).

(*t*) 6 & 7 Will. 4, c. 86, s. 31 (*post*, p. 91).

(*u*) 8 Edw. 7, c. 26 (*post*, p. 163).

(*x*) Sect. 1 (*post*, p. 163).

(*y*) 19 & 20 Vict. c. 119, s. 2 (*post*, p. 105).

(*z*) 8 Edw. 7, c. 26, s. 2 (*post*, p. 163).

(*a*) 19 & 20 Vict. c. 119, s. 3 (*post*, p. 105).

IRELAND.

IMPEDIMENTS TO MARRIAGE.

The law of Ireland affecting impediments to marriage is the same as that of England, though resting to some extent on different enactments. The Church of Rome has no power to dispense against the positive enactment of statute law so as to make a marriage in Ireland valid which is otherwise void.

Marriage with a deceased wife's sister has been rendered valid (*a*). But no clergyman of the Church of Ireland (*b*) or of any denomination can be compelled to solemnize marriage between a man and his deceased wife's sister.

SOLEMNIZATION OF MARRIAGE.

To a large extent the requirements of the law are similar to those in England; and only the differences between the English and Irish systems will be set out.

This subject will be treated under the headings of the different denominational bodies which are recognized by statute in Ireland.

A. Marriages of Protestant Episcopalians (*c*).

These may be solemnized—

(i) *After publication of banns*, which must take place either after the reading of the Nicene Creed or immediately after the reading of the second lesson at morning prayer (*d*).

Banns may be published either on three consecutive Sundays or holy days on which divine service is performed.

Both parties must be Protestant Episcopalians (*e*).

Where one party is resident in Ireland and one in England at the time of publication, the publication in the respective countries of their residence, if according to law, is sufficient (*f*).

(*a*) 7 Edw. 7, c. 41, s. 1 (*post*, p. 162).

(*b*) See Faloon, *The Marriage Law of Ireland*, p. 31.

(*c*) Members of the Church of Ireland, the Protestant Episcopal Church of England, the Episcopal Church of Scotland, and any other Protestant Episcopal Church (33 & 34 Vict. c. 110, s. 47).

(*d*) Statutes of the Irish Church, c. xvii.

(*e*) 33 & 34 Vict. c. 110, s. 32 (*post*, p. 228).

(*f*) 62 & 63 Vict. c. 27. This statute validated marriages which had been previously solemnized under such circumstances.

(ii) *By special licence (g).*

Both parties must be Protestant Episcopalians, and may marry on it at any convenient time in any place within the episcopal superintendence of the grantor (*h*). But the certificate of the marriage registrar (after the proper notice) of the district within which such marriage is intended to be solemnized must be procured by the contracting parties and produced to the officiating clergyman (*i*).

This certificate must be signed by the contracting parties, at least two witnesses, and the officiating clergyman, and must be sent to the Registrar-General of Marriages within three days of the solemnization of the marriage; and if not so sent the husband will render himself liable to a fine of £10 (*k*).

(iii) *By ordinary licence (l).*—A residence by one of the parties of at least fourteen days in the district in the church of which the marriage is to be solemnized is necessary (*m*).

This licence shall not be granted until seven days after the statutory notice shall have been given by one of the parties who shall have dwelt for not less than seven days then next preceding in the district named in the notice (*n*).

The party who gives the notice must send a copy of it to the clergymen officiating at the places of worship where the parties intending marriage have been in the habit of attending (*o*).

One of the parties must be a Protestant Episcopalian (*p*).

(iv) *On the registrar's certificate.*—A Protestant Episcopalian clergyman is bound to solemnize marriage on the production of this certificate if his church is within the district of the registrar issuing it (*q*). The production of this certificate is necessary where—

(a) The marriage is a mixed one—that is, between a Roman Catholic and a Protestant Episcopalian (*r*).

(b) The marriage is solemnized in Ireland, but one of the parties

(*g*) This licence may be granted by any archbishop or bishop of the Protestant Episcopal Church of Ireland.

(*h*) 33 & 34 Vict. c. 110, s. 36 (*post*, p. 230).

(*i*) 34 & 35 Vict. c. 49, s. 22 (*post*, p. 233).

(*k*) *Ibid.*

(*l*) Granted by persons nominated by the bishops (33 & 34 Vict. c. 110, s. 35: *post*, p. 229, and 34 & 35 Vict. c. 49, s. 29: *post*, p. 235).

(*m*) *Ibid.*

(*n*) *Ibid.*

(*o*) *Ibid.*

(*p*) 34 & 35 Vict. c. 49, s. 26 (*post*, p. 234).

(*q*) 7 & 8 Vict. c. 81, s. 1 (*post*, p. 195).

(*r*) See Mixed Marriages, *post*, p. 42.

resides in England or Scotland. If the party resides in England he must give the proper and usual notice to the superintendent registrar of the district in which he has resided at least seven days (*s*). If the party resides in Scotland he must produce a certificate of due publication of banns from the minister of the congregation of which he has been a member for not less than a month (*t*).

The production of the English or Scottish certificates (as the case may be) will entitle the Irish registrar to grant his certificate.

B. Marriages of Roman Catholics.

These may be solemnized—

(i) *After publication of banns*, which may be proclaimed on three consecutive Sundays or holy days where both parties are Roman Catholics.

(ii) *By special licence* (*u*).—The parties must go before their parish priest, who, after enquiry as to the freedom of the parties to marry and their knowledge of the doctrines of the church on the subject of marriage, gives them the requisite certificate, which is presented to the bishop or his vicar, who grants the licence.

The parties must also obtain a certificate from the registrar of the district in which the marriage is to be solemnized, which must be produced to the officiating clergyman, and when properly filled up must be sent within three days after the marriage to the Registrar-General of Marriages (*x*).

(iii) *By ordinary licence* (*y*).—This licence may be granted where—

(a) Both parties are Roman Catholics.

(b) One party only is a Roman Catholic. In this case notice must be given by one of such parties to the person empowered to issue the licence seven days before the licence is to issue. The person issuing the licence must forthwith send a copy of it to the clergymen officiating at the places of worship where the contracting parties have been in the habit of attending (*z*).

(iv) *On the registrar's certificate*.—This certificate must be obtained where the marriage is a mixed one—that is to say, where

(*s*) 9 & 10 Vict. c. 72, s. 1 (*post*, p. 215).

(*t*) *Ibid.* sect. 2 (*post*, p. 215). Perhaps a registrar's certificate issued in accordance with the provisions of 41 & 42 Vict. c. 43 (*post*, p. 186), would be equivalent to the Scottish minister's certificate of the proclamation of banns.

(*u*) This licence may be granted by any bishop of the diocese in which both contracting parties reside if both are Roman Catholics.

(*x*) 26 & 27 Vict. c. 90, s. 11 (*post*, p. 223); 34 & 35 Vict. c. 49, s. 22 (*post*, p. 233).

(*y*) This is granted by the person nominated by the bishop for that purpose.

(*z*) 34 & 35 Vict. c. 49, s. 25 (*post*, p. 234).

one party is a Roman Catholic and the other is not a Roman Catholic (*a*).

C. Marriages of Presbyterians.

These may be solemnized—

(i) *After publication of banns*, which must be published on three Sundays preceding the solemnization of marriage in the meeting house of the congregation or meeting houses of the congregations (as the case may be) of the parties during the time of divine service. Both parties must be Presbyterians (*b*).

The parties must, six days before the first publication of banns, deliver or cause to be delivered to such minister or ministers the statutory notice (*c*). A marriage not had in the certified meeting house in which the banns have been published is void (*d*).

(ii) *By special licence* (*e*).—Both parties must belong to the same church, assembly, synod, or presbytery granting the licence (*f*).

(iii) *By ordinary licence* (*g*).—The party applying for this licence must, seven days before its grant, produce to the licensing minister a certificate from the minister of his or her congregation that he or she has been a member of such congregation for at least one calendar month next preceding (*h*). Before the licence is granted one of the parties must appear personally before the licensing minister and take the statutory oath or affirmation (*i*). Both parties need not be Presbyterians.

A marriage not had in the certified meeting house specified in the licence is void (*k*).

D. Marriages of Quakers.

These may be celebrated—

(i) *By special licence* (*l*).—Both parties must be Quakers, and may be married at any convenient time and place in Ireland (*m*).

(*a*) See Mixed Marriages, *post*, p. 42.

(*b*) 7 & 8 Vict. c. 81, s. 5 (*post*, p. 196). Marriages after publication of banns in this communion are rare.

(*c*) *Ibid.* sect. 4 (*post*, p. 195).

(*d*) *Ibid.* sect. 49 (*post*, p. 206).

(*e*) This licence may be granted by the heads of the different Presbyterian bodies mentioned in 33 & 34 Vict. c. 110, s. 37.

(*f*) The cost of this licence is about £10 5s.

(*g*) This licence is issued by the ministers appointed by the different presbyteries, who may grant them for marriages in meeting houses within their respective jurisdictions.

(*h*) 7 & 8 Vict. c. 81, s. 8 (*post*, p. 197).

(*i*) *Ibid.* sect. 9 (*post*, p. 197).

(*k*) *Ibid.* sect. 49 (*post*, p. 206).

(*l*) This licence may be granted by the Clerk to the yearly meeting of the Society of Friends in Ireland.

(*m*) 33 & 34 Vict. c. 110, s. 37.

The parties must first obtain from a district registrar the statutory certificate which is to be produced to the registering officer of the Society of Friends for the district in which the marriage is to be solemnized, and after the marriage signed by the contracting parties and at least two witnesses and the registering officer, and sent within three days of the marriage to the Registrar-General of Marriages. If not so sent, the husband is liable to a fine of £10 (*n*).

(ii) *On the registrar's licence (o)*.

(iii) *On the registrar's certificate (p)*.—Where the marriage is to be solemnized on the registrar's licence or certificate, one party only or even neither need be a professing member of the Society of Friends, provided there is produced to the registrar a certificate signed by a registering officer of the Society that both or one of the parties are or is duly authorized to proceed to the accomplishment of the marriage (*q*).

The registrar's certificate (*r*) must be given to the registering officer for the meeting house where the marriage is solemnized. Such registering officer, whether present or not at the ceremony, must satisfy himself that the usages of the Society have been complied with (*s*).

The presence of the registrar is not necessary at the marriage of Quakers solemnized in any certified meeting house (*t*).

E. Marriages of Jews.

The statutory provisions regulating the solemnization of the marriages of Quakers are applicable *mutatis mutandis* to those of Jews, with but few exceptions (*u*).

No special licence can be granted for the marriage of Jews.

If a marriage is to be solemnized according to Jewish usage, both parties must be professing Jews.

Jews must give the statutory notice to their district registrar of their intended marriage (*x*).

It is not necessary that the building stated in such notice as the

(*n*) 34 & 35 Vict. c. 49, s. 22 (*post*, p. 233).

(*o*) 26 Vict. c. 27, s. 2. See Mixed Marriages, *post*, p. 42, for the necessary formalities.

(*p*) 26 Vict. c. 27, ss. 2, 5. See Mixed Marriages, *post*, p. 42, for the necessary formalities.

(*q*) 33 & 34 Vict. c. 110, s. 37; 35 Vict. c. 10, s. 1 (*post*, p. 118).

(*r*) 7 & 8 Vict. c. 81, Sched. B.

(*s*) 7 & 8 Vict. c. 81, s. 64.

(*t*) 26 Vict. c. 27, s. 8 (*post*, p. 218).

(*u*) See Marriage of Jews in England, *ante*, p. 29.

(*x*) 26 Vict. c. 27, s. 2 (*post*, p. 217).

building in which such marriage is intended to be solemnized, or that the building in which such marriage is solemnized shall be within the district within which one of the parties shall have dwelt the prescribed period of at least seven days (*y*).

F. Marriages of those belonging to other Denominations.

- (i) *By special licence (z).*
- (ii) *On registrar's licence.*
- (iii) *On registrar's certificate.*

A marriage had either on the registrar's licence or certificate must be solemnized by the minister of the church or denomination or body to which the parties to the marriage or one of them shall belong in the registered place of worship named in the notice to the registrar, and not elsewhere (*a*).

A wilful transgression of these provisions is a felony (*b*).

Marriages solemnized between members of these denominations before the year 1873 are valid (*c*).

G. Marriages in the presence of the Registrar.

The statutory provisions regulating these marriages are very similar to those in England (*d*), except that in the notice to the registrar (*e*) there must be an additional statement as to whether the marriage is to be solemnized by virtue of the registrar's certificate or by virtue of his licence (*f*).

The notice must be accompanied by a statutory declaration (*g*).

The grant of a licence must not be made until after the expiration of seven days from the entry of the notice (*h*).

The case of persons married in the presence of the registrar in his office who desire to be married afterwards with a religious ceremony on the production of his certificate is not provided for in Ireland.

(*y*) 34 & 35 Vict. c. 49, s. 28 (*post*, p. 234).

(*z*) This licence is granted by the head of one or other of the non-conforming bodies (not being Presbyterians) mentioned in 33 & 34 Vict. c. 110, s. 37, as amended by 34 & 35 Vict. c. 49, s. 21 (*post*, p. 233). Both parties must belong to the same body as the grantor of this licence.

(*a*) 26 Vict. c. 27, s. 7 (*post*, p. 218).

(*b*) *Ibid.*

(*c*) 7 & 8 Vict. c. 81; 26 Vict. c. 27; 33 & 34 Vict. c. 110; and 36 Vict. c. 16, s. 2 (*post*, p. 236).

(*d*) See *ante*, pp. 27, 28.

(*e*) See Form of Notice, 26 Vict. c. 27, Sched. A. (*post*, p. 221).

(*f*) 26 Vict. c. 27, s. 2 (*post*, p. 236).

(*g*) *Ibid.*, Sched. B.

(*h*) *Ibid.*, s. 5 (*post*, p. 218).

H. Mixed Marriages.

A mixed marriage is one celebrated by the minister of one denomination between parties who are not of his denomination or who are themselves of different denominations. The term is usually applied only to marriages of Protestant Episcopalians and Roman Catholics.

A marriage may be lawfully solemnized by a Protestant Episcopalian clergyman between a person who is a Protestant Episcopalian and a person who is not a Protestant Episcopalian, and by a Roman Catholic clergyman between a person who is a Roman Catholic and a person who is not a Roman Catholic, provided the following conditions are fulfilled:—

(1) That such notice is given to the registrar, and such certificate is issued, as are required by 7 & 8 Vict. c. 81, ss. 13 and 16, and 26 Vict. c. 27, ss. 3, 4 and 5, in every case of marriage intended to be solemnized according to the rites of the [United] Church of [England and] Ireland, with the exception of marriages by licence or special licence, or after publication of banns.

(2) That the certificate of the registrar or the licence issued by a person empowered to issue ordinary licences to Protestant Episcopalians or Roman Catholics (*i*), is delivered to the clergyman solemnizing such marriage at the time of the solemnization of the marriage.

(3) That such marriage is solemnized in a building set apart for the celebration of divine service according to the rites and ceremonies of the clergyman (*sic*) solemnizing such marriage, and situated in the district of the registrar by whom the certificate is issued.

(4) With open doors.

(5) That such marriage is solemnized between the hours of eight in the forenoon and two in the afternoon, in the presence of two or more credible witnesses (*j*).

Any marriage solemnized by a Protestant Episcopalian clergyman between a person who is a Protestant Episcopalian and a person who is not a Protestant Episcopalian, or by a Roman Catholic clergyman between a person who is a Roman Catholic and a person who is not a Roman Catholic, shall be void to all intents in cases where the parties to such marriage knowingly and wilfully intermarried without complying with the above statutory provisions (*k*).

(*i*) 34 & 35 Vict. c. 49, s. 27 (*post*, p. 234).

(*j*) 33 & 34 Vict. c. 110, s. 38 (*post*, p. 230); and see sect. 40 (*post*, p. 231).

(*k*) *Ibid.* sect. 39 (*post*, p. 231).

The intention to disregard the statutory formalities must be deliberate (*l*).

The legal hours of marriage for all marriages except those by special licence are from 8 a.m. to 2 p.m. (*m*).

NOTICE OF MARRIAGE.

A. Protestant Episcopalians.

1. *By special licence*.—Parties seeking to be married by special licence must produce to the celebrating clergyman a certificate according to the form in the schedule annexed to the Marriage Law (Ireland) Amendment Act, 1871 (*n*), which must be procured from the registrar of the district within which the marriage is intended to be solemnized (*o*). For the contents, see “Marriages in the presence of the Registrar” (*p*).

2. *By ordinary licence*.—Parties seeking to be married by ordinary licence must give the registrar of the district in which it is intended to be solemnized the notice required by The Marriages in Ireland Amendment Act, 1863 (*q*), and set out in Schedule A to that Act. For the contents, see “Marriages in the presence of the Registrar” (*r*).

3. *By banns*.—In the case of marriage by banns no notice as to residence or absence of impediment to the contract seems requisite.

4. *On the registrar's certificate*.—For the contents of the notice required, see “Marriages in the presence of the Registrar” (*s*).

If one party is resident in England, notice by the party there residing must be given to the superintendent registrar of the district in which the party giving notice has resided seven days at least preceding the giving of such notice (*t*). On the issue of the English superintendent registrar's certificate its production authorizes the Irish superintendent registrar to grant a licence (*u*).

If one party is resident in Scotland a certificate of publication of banns in the congregation of which the party resident in Scot-

(*l*) *Re Kneec*, 23 L. R. (Ir.) 542. A marriage celebrated without the proper statutory formalities cannot be questioned by either of the parties in order to avoid forfeiture of certain rights consequent on such marriage (*Ibid.*).

(*m*) 7 & 8 Vict. c. 72; 26 Vict. c. 27; 33 & 34 Vict. c. 110.

(*n*) 34 & 35 Vict. c. 49.

(*o*) *Ibid.* sect. 22 (*post*, p. 233).

(*p*) See *ante*, p. 41.

(*q*) 26 Vict. c. 27.

(*r*) See *ante*, p. 41.

(*s*) *Ante*, p. 41.

(*t*) 9 & 10 Vict. c. 72, s. 1 (*post*, p. 215).

(*u*) *Ibid.*

land is a member for three successive Sundays must be procured from the minister of the congregation. Its production after the expiration of seven days from the date of its issue authorizes the Irish superintendent registrar to grant a licence (*v*).

B. Roman Catholics.

1. *By special licence*.—See “Marriages by Special Licence in the case of Protestant Episcopalians” (*x*).

2. *By ordinary licence*.—No statutory notice required.

3. *By banns*.—No statutory notice required.

4. *On the registrar's certificate*.—For the notice required in this case, see “Marriages of Protestant Episcopalians on the Registrar's Certificate” (*y*).

C. Presbyterians.

1. *By special licence*.—See “Marriages by Special Licence in the case of Protestant Episcopalians” (*z*).

2. *By ordinary licence*.—One of the parties seeking to marry must be a Presbyterian, and obtain from the minister of his or her congregation a statutory certificate (*a*). Seven days after the delivery of the certificate the party procuring it makes before the licensing minister a declaration on oath that there is no lawful impediment to the marriage, that one of the parties has for fifteen days immediately preceding the grant of the licence had his or her usual place of abode within the presbytery in the jurisdiction of which the marriage is to be solemnized, that they are both of full age, or the consent of proper parties had, &c. (*b*).

3. *By banns*.—Persons seeking marriage after banns must at least six days before the time required for the first publication of such banns deliver or cause to be delivered to the minister who is to publish them a notice in writing of their true Christian and surnames, and of the congregation or congregations of which they shall be respectively members, and of the house or houses of their respective abodes, and of the time during which they have dwelt, inhabited, or lodged in such house or houses respectively (*c*).

(*v*) 9 & 10 Vict. c. 72, s. 2 (*post*, p. 215).

(*x*) *Ante*, p. 37.

(*y*) *Ante*, p. 37.

(*z*) *Ante*, p. 37.

(*a*) 7 & 8 Vict. c. 81, Sched. D (*post*, p. 212).

(*b*) *Ibid.* sect. 9 (*post*, p. 197).

(*c*) *Ibid.* sect. 6 (*post*, p. 196).

Where one of the parties is resident in England, notice of the intended marriage must be given by such party to the superintendent registrar of the district where residing for not less than seven days next preceding, and which must contain the same requisite information as an application for a licence in Ireland (*d*).

Where one party is resident in Scotland a certificate of publication of banns in the congregation of which the resident is a member for three successive Sundays must be procured from the minister of the congregation (*e*).

D. Quakers.

1. *By special licence*.—Quakers desiring to be married by special licence must first obtain from the superintendent registrar of the district in which the marriage is intended to be solemnized a certificate in the form (or to the like effect) of the schedule to the Marriage Law (Ireland) Amendment Act, 1871 (*f*).

2. *On the registrar's licence or certificate*.—See “Marriages before the Registrar” (*g*).

E. Jews.

For the notice required in the case of marriages of Jews, see “Marriages before the Registrar” (*h*).

F. Mixed Marriages.

For the notice required in the case of mixed marriages, see “Marriages before the Registrar” (*i*).

G. Marriages before the Registrar.

The notice required for such marriages must be given in the form of Schedule A to the Marriages (Ireland) Amendment Act, 1863 (*k*), to the registrar of the district in which the parties shall have dwelt for not less than seven days next preceding, or if they dwell in the districts of different registrars to the registrar of each district (*l*). The declaration to be made by the parties is similar

(*d*) 9 & 10 Vict. c. 72, s. 1 (*post*, p. 215).

(*e*) *Ibid.* sect. 2 (*post*, p. 215).

(*f*) 34 & 35 Vict. c. 49.

(*g*) *Infra*.

(*h*) *Infra*.

(*i*) *Infra*.

(*k*) 26 Vict. c. 27, s. 2 (*post*, p. 217). The notice must state whether the marriage is to be by licence or certificate.

(*l*) 7 & 8 Vict. c. 81, s. 13 (*post*, p. 198).

to that required in England (*m*), and without it no certificate or licence for marriage can issue (*n*).

REGISTRATION.

A. Protestant Episcopalian Marriages.

The clergyman solemnizing marriage shall immediately after the ceremony register in duplicate in two of the marriage register books the fact of the marriage according to the form in Schedule G to the Registration of Marriages (Ireland) Act, 1844 (*o*), and signed by him and two witnesses; and shall every quarter make a return to the registrar of the district of a certified true copy of all marriages in his register book since the last return (*p*).

B. Presbyterian, Quaker and Jewish Marriages.

Every Presbyterian minister in the case of a marriage between Presbyterians, every registering officer in the case of a marriage between Quakers, as soon as conveniently may be after the marriage, and every secretary of a synagogue shall immediately after the marriage register, or cause to be registered, in duplicate in two marriage register books the fact of the marriage according to the form of Schedule G. to the Registration of Marriages (Ireland) Act, 1844, with the signature of such minister, registering officer, and secretary of a synagogue (*q*). And every such minister, registering officer, and secretary of a synagogue shall in every quarter make a return to the registrar of the district of a certified true copy of all marriages in his register book since the last return (*r*).

C. Roman Catholic Marriages.

Parties contracting marriage shall within three days thereafter either deliver or send by post a certificate according to the Form A in the schedule to the Registration of Marriages (Ireland) Act, 1863 (*s*), to the registrar of the district, and the husband shall in case of failure so to deliver or send such certificate be liable in a penalty not exceeding £10 (*t*).

(*m*) *Ante*, p. 31.

(*n*) 26 Vict. c. 27, s. 4 (*post*, p. 218).

(*o*) 7 & 8 Vict. c. 81.

(*p*) *Ibid.* sect. 64 (*post*, p. 208).

(*q*) *Ibid.* sect. 65 (*post*, p. 208).

(*r*) *Ibid.*

(*s*) 26 & 27 Vict. c. 90.

(*t*) *Ibid.* sect. 11 (*post*, p. 223).

Under the Naval Marriages Act, 1908 (*u*), where a party to a marriage intended to be solemnized in *Ireland* after the publication of banns is an officer, seaman or marine borne on the books of one of His Majesty's ships at sea, his banns may be published on three successive Sundays at morning service on board that ship by the chaplain, or if there is no chaplain, by the captain or other officer commanding the ship; and where banns have been so published, the person who published them shall (unless they have been forbidden on any of the grounds on which banns may be forbidden) give a certificate of publication (*x*).

Where such marriage is intended to be solemnized or contracted otherwise than after publication of banns or by licence or special licence, the captain or other officer commanding the ship may, after proper notice given under the Marriage Law (Ireland) Amendment Act, 1863 (*y*), issue a certificate to such officer, seaman or marine (*z*), which certificate shall have the same force and effect as a certificate of publication of banns, or certificate by a district registrar of marriages under the Marriage Law (Ireland) Amendment Act, 1863 (*a*).

Where such officer, seaman or marine intends to contract a marriage by licence from a district registrar of marriages the provisions of section two of this Act, as applied to Ireland, shall apply as if the marriage was to be had without licence, and the notice to be given by the other party need contain no statement as to his abode or residence in the United Kingdom; but before the district registrar issues his licence, the proper certificate under the Act must be produced to him (*b*).

SCOTLAND.

"By the law of Scotland marriage is a consensual contract requiring" for its validity "no particular solemnity nor even written evidence, but deliberate and unconditional consent alone." There is no restraint on account of "nonage" (minority) "except that

(*u*) 8 Edw. 7, c. 26.

(*x*) Sect. 1 (*post*, p. 163).

(*y*) 26 Vict. c. 27. Sect. 4 of this Act, which requires a declaration as to attendance at a place of worship of the male party does not apply to a declaration under the Naval Marriages Act, 1908, or made for the purposes of marriage under that Act. 8 Edw. 7, c. 26, s. 5 (1) (*b*).

(*z*) 8 Edw. 7, c. 26, ss. 1, 5 (*post*, pp. 163, 164).

(*a*) *Ibid.* sects. 3, 5 (1) (*post*, pp. 163, 164).

(*b*) *Ibid.* sect. 5 (2) (*post*, p. 163).

which proceeds from incapacity for consent" (and presumed sexual incapacity) "in persons under puberty, *i.e.*, under fourteen in the case of a male, and under twelve in the case of a female" (*a*).

The essential requisite of the contract is unconditional consent *de præsenti* to marriage by persons not under the influence of force and fear, or fraud or essential error, and not barred by any impediment from intermarrying (*b*).

"There is no necessity for the consent of parents or guardians."

The Scottish Courts will not enforce an injunction issued by the High Court in England to prevent the marriage in Scotland of a minor who is a ward of the English Court, and has not obtained the consent of that Court or of his or her guardians to the marriage (*c*).

Impediments.—The following impediments to marriage recognized by the law of Scotland are:—

1. *Nonage*.—That either party has not attained to the age of puberty: fourteen in a male, twelve in a female. If after pupillarity has expired the parties continue to cohabit as husband and wife, the marriage contracted during nonage may be ratified (*d*).

2. *Impotency*.—That at the time of marriage *impotentia copulandi* existed in one of the parties and is incurable. This condition renders the marriage voidable at the instance of the other spouse (*e*).

3. *Insanity*.—That at the time of the marriage either party was insane (*f*), or subject to mental incapacity produced by drunkenness (*g*). Proceedings to annul marriage on this ground may be taken by the lunatic or drunkard on recovering his senses, or by the committee or *curator bonis* in the case of a lunatic after cognition (*h*). A sane person who has unwittingly contracted with an insane person is entitled to have the marriage annulled (*i*).

4. *Consanguinity and affinity*.—That the parties are related to each other within the forbidden degrees of consanguinity or affinity (*k*). The computation of the degrees of consanguinity and

(*a*) Bell, Dict. Law Sc. (9th ed.), sect. 1506; and see Fraser, Husband and Wife (2nd ed.).

(*b*) Bell, sect. 1508.

(*c*) See Treaty of Union, Art. 19, 6 Anne, c. 11.

(*d*) See Fraser, Husband and Wife (2nd ed.), 51.

(*e*) This is fully discussed in Fraser, *l. c.* 80.

(*f*) Fraser, *l. c.*

(*g*) *Johnston v. Brown*, Ferguson (Sc.), 229.

(*h*) Fraser, *l. c.* 74.

(*i*) *Ibid.* 79.

(*k*) For English degrees, see *ante*, pp. 14, 15.

affinity in Scotland is made as to the direct line according to the Roman law, and as to the oblique line usually according to the Roman law in preference to the Canon law (*l*). The Scots Act of 1857, c. 16 (*m*), has been interpreted as allowing marriages between persons related in the second or a more distant degree unless the marriage is expressly or implicitly forbidden by the words of Leviticus xviii. (*n*). Thus marriage between aunt and nephew or uncle and niece is prohibited by the Act, though they are seconds in degree (*o*), and brothers or sisters of an ascendant are not allowed to intermarry with his descendants, but cousins german and their descendants may intermarry (*p*).

Relationship by affinity arises only from marriage consummated.

The forbidden degrees of affinity are the same in Scots law as the forbidden degrees of consanguinity (*q*), and included marriage between a man and the sister of his deceased *wife* (*r*) until 1907 (*s*). The prohibitions apply to the half blood as well as the whole blood (*t*).

No dispensation can legalize a marriage invalid within the above Act (*u*), and persons who marry within the forbidden degrees are liable to prosecution for incest (*x*).

5. *Prior subsisting marriage*.—Prior valid and subsisting marriage, *i.e.*, marriage not null *ab initio* and not dissolved by death or decree of divorce nor decreed null (*y*). It does not matter whether the first marriage was regular or irregular.

6. *Adultery*.—Adultery between the divorced party and the paramour, if declared by the sentence of the competent tribunal in Scotland, is a bar to their subsequent marriage in Scotland (*z*).

Modes of contracting marriage.—There is no absolute necessity for publication, or solemnity or celebration, or particular place or

(*l*) Fraser, *l. c.* 106 *et seq.*

(*m*) *Post*, p. 173.

(*n*) Fraser, *l. c.* 113.

(*o*) *Stewart's Case* (1846), 2 Brown, 544.

(*p*) See Fraser, *l. c.* 119.

(*q*) *Ibid.* 121 *et seq.*

(*r*) *Ibid.* 128.

(*s*) 7 Edw. 7, c. 47 (*post*, p. 162).

(*t*) Fraser, *l. c.* 132. As to illegitimate relationships, see *Ibid.* 131, 132.

(*u*) *Ibid.* 133.

(*x*) Under the Scots Act of 1567, c. 15 (*post*, p. 174).

(*y*) Fraser, *l. c.* 135 *et seq.*; Scots Act, 1551, c. 19 (*post*, p. 173), *Breadalbane Case* (1867), L. R. 1 Sc. & Div. 182, 212, Lord Westbury.

(*z*) Scots Act of 1600, c. 29. See Fraser, 140, 145; *Beattie v. Beattie* (1866), 4 Macph. (Sc.) 181. The Act has not fallen into desuetude (Fraser, 144). The usual practice is to omit the name of the paramour in the sentence.

time of celebration (*c*) of marriage in Scotland. But marriages there fall into two classes according to the mode in which the contract is entered into.

- A. *Regular, i.e.*, celebrated by a minister of religion in accordance with the forms established or recognised by statute.
- B. *Irregular or clandestine, i.e.*, celebrated otherwise than in accordance with such forms.

A. REGULAR MARRIAGE.

There is no direct provision in Scots law for contracting a marriage before any civil officer.

Regular marriages in Scotland are performed before a minister of religion in the presence of at least two witnesses, and after (*a*) due publication or proclamation of banns in Scotland (*d*); or (*b*) after notice of the intended marriage to the registrars of the districts in which the parties have resided for not less than fifteen days, and certificate by the registrar that the notice has been given, the requirements of the law complied with, and no objections stated (*e*).

Marriages before Episcopalian ministers are allowed under and subject to the conditions imposed by 10 Anne, c. 10 (*f*).

The Marriage (Scotland) Act, 1834 (*g*), authorises marriage by priests or ministers not of the Established Church of Scotland, after due proclamation of banns in Scotland.

The attendance of the civil registrar at a marriage is not essential to its validity, but on forty-eight hours' written notice he may be required to attend at the solemnization of a marriage at any place within his parish, with the registry book to enter the marriage therein (*h*).

No set form of service is prescribed by any Act relating to Scotland, and the ceremony is regulated by the rites usual in the religious community to which the officiating minister belongs.

No place is prescribed for the ceremony, and it may and often does take place in a private house.

The marriage in Scotland of an officer, seaman or marine who is

(*c*) Bell, Dict. Law Sc. (9th ed.), sects. 1506, 1514; Fraser, Husband and Wife (2nd ed.), 293.

(*d*) 41 & 42 Vict. c. 43, s. 12 (*post*, p. 188). Fraser (2nd ed.), 282, 293.

(*e*) 41 & 42 Vict. c. 43, ss. 9, 12 (*post*, pp. 187, 188).

(*f*) *Post*, p. 176. Until the passing of that Act only a member of the Church of Scotland could perform a regular marriage. Scots Act, 1661, c. 246 (*post*, p. 175).

(*g*) 4 & 5 Will. 4, c. 28 (*post*, p. 177).

(*h*) 17 & 18 Vict. c. 80, s. 47 (*post*, p. 179).

on the books of one of His Majesty's ships at sea is regulated by the Naval Marriages Act, 1908 (*i*).

Under that Act, where a party to a marriage intended to be solemnized in Scotland after the publication of banns is an officer, seaman or marine borne on the books of one of His Majesty's ships at sea, his banns may be published on three successive Sundays at morning service on board that ship by the chaplain, or if there is no chaplain, by the captain or other officer commanding the ship; and where banns have been so published, the person who published them shall (unless they have been forbidden on any of the grounds on which banns may be forbidden) give a certificate of publication (*k*).

Where such marriage is intended to be solemnized or contracted otherwise than after publication of banns, the captain or other officer commanding the ship may, after proper notice and requisite declaration under the Marriage Notice (Scotland) Act, 1878 (*l*), issue a certificate to the officer, seaman or marine giving the notice (*m*). Such certificate shall have the same force and effect as a certificate of publication of banns by a sessions clerk or other proper officer for granting the same, or a certificate of a registrar under the Marriage Notice (Scotland) Act, 1878 (*n*).

B. IRREGULAR OR CLANDESTINE MARRIAGES.

The only statutory provision invalidating irregular marriages is that requiring, in the case of a marriage contracted in Scotland by declaration, acknowledgment or ceremony, that one of the parties should at the date of the contract have his usual place of residence there or have lived there for twenty-one days next preceding the marriage (*o*).

Subject to this condition a marriage may be validly contracted in Scotland in any manner which affords distinct evidence of a mutual agreement between the parties *per verba de presenti*, to become husband and wife immediately from the time when the mutual consent is given (*p*). Failure to comply with the statutory provisions of Scots law (*q*) may expose the parties to prosecution, but the conviction establishes the marriage.

(*i*) 8 Edw. 7, c. 26 (*post*, p. 163).

(*k*) Sect. 1.

(*l*) 41 & 42 Vict. c. 43 (*post*, p. 186).

(*m*) 8 Edw. 7, c. 26, ss. 1, 4 (*post*, p. 163).

(*n*) *Ibid.* sects. 3, 4.

(*o*) 19 & 20 Vict. c. 96, s. 1 (*post*, p. 185).

(*p*) *Breadalbane Case* (1867), L. R. 1 Sc. & Div. 182, 199, Lord Cranworth.

(*q*) See the Acts of 1661, c. 246 (*post*, p. 175); 1698, c. 6 (*post*, p. 176); and 1856, c. 96 (*post*, p. 185).

Habit and repute.—An irregular marriage is not made by habit and repute. But by the law of Scotland the conduct of the parties by cohabitation as man and wife, and of their relatives, neighbours, friends and acquaintances in giving credit to the cohabitation as founded on marriage (shortly described as habit and repute), may afford unanswerable evidence that at some unascertained time a mutual agreement to marry was entered into by the parties passing as man and wife (*s*). In applying this doctrine it is necessary to show that at all material times the domicile of the man was Scotch.

Where an irregular marriage has been contracted its recognition or validation can be obtained in three ways:—

1. By production to the registrar of an extract of a decree of declarator by a competent court establishing the marriage.
2. By production to the registrar of an extract of a conviction before a justice of the peace or magistrate (*t*) of having irregularly contracted the marriage (*u*), which conviction must state that the convicting magistrate had before him proof, other than the acknowledgment of the parties, that one of them had at the date of the marriage had his usual residence in Scotland or had lived in Scotland for twenty-one days next before the marriage (*v*).
3. By production to the registrar of a warrant to register the marriage from the sheriff or sheriff substitute of the county in which it was contracted. The warrant is obtainable on the joint application of the parties within three months of the date of the contract, and a proof to the satisfaction of the judge that they have been married to one another, and that the conditions above stated as to residence or living in Scotland have been satisfied (*w*).

Legitimation by subsequent marriage.—A marriage which de-

(*s*) *Breadalbane Case* (1867), L. R. 1 Sc. & Div. 182, 200, Lord Cranworth; 211, Lord Westbury. In this case a Scotchman serving in the British army had in 1780 eloped with the wife of an Englishman, and lived with her continuously until 1806. The English husband died in 1784. The effect of the judgment of the House of Lords was to declare the legitimacy of the descendants of a son born in 1788 to the parties whose marriage was in question.

(*t*) In practice this jurisdiction is exercised only by the sheriff substitute.

(*u*) 17 & 18 Vict. c. 80, s. 48 (*post*, p. 179).

(*v*) 19 & 20 Vict. c. 96, s. 3 (*post*, p. 185).

(*w*) *Ibid.* sect. 2 (*post*, p. 185). The usual mode of obtaining registration of irregular marriage is by "confession" of the offence of having contracted an irregular marriage. This confession is made before the sheriff, who records the conviction in the records of his criminal Court, and gives an extract of the entry to the parties. He usually imposes a fine which amounts to the recognized marriage fee and is the perquisite of his clerk. This procedure is known as marriage before the sheriff, and is usually adopted by the Salvation Army in Scotland.

pendents for its validity on the law of Scotland has the effect of legitimizing children born to the parties before the date at which it is held to have been contracted, if at the date of their procreation there was no impediment to marriage between the parents (*x*).

The legitimacy of the child depends on the fact of the marriage, and not on the recognition of the parents (*y*).

The legitimation thus effected operates for all purposes of Scots law. It does not operate so as to entitle the children to inherit real estate in England or Ireland (*z*), but it qualifies them to succeed as next of kin to personalty in England if the law of their father's domicile entitles them to claim the succession (*zz*).

Where marriage with a spouse not the parent of the illegitimate child has intervened between the birth of the same and the marriage of its parents, children born of the legitimate intervening union inherit in priority to children legitimated by the subsequent marriage.

Foreign Marriages,

OR MARRIAGES OF BRITISH SUBJECTS SOLEMNIZED ABROAD.

The marriages of British subjects going abroad to marry or marrying while staying abroad are recognized as valid in their domicile if solemnized according to the forms and ceremonies prescribed by the laws of the place of celebration (*a*).

Owing to the constitution of the British Empire there is no general British domicile, but only domicile in England, Scotland or Ireland, or other parts of the British Islands, or in British possessions (*aa*).

There must be no impediment to contracting a valid marriage by the law of their domicile by reason of consanguinity, affinity, previous marriage, &c. (*b*).

Domiciled British subjects marrying abroad in a place where it is impossible for them to marry with the local forms and ceremonies, may contract a valid marriage if it is celebrated according to the forms of their *lex domicilii* (*c*). But the impossibility of com-

(*x*) Bell, Dict. Law Sc. (ed. Watson) 590; *Breadalbane Case* (1867), L. R. 1 Sc. & Div. 182. This rule does not legitimise an adulterine bastard.

(*y*) Bell, Dict. Law Sc. 590; *Macdonald Case* (June, 1910), not yet reported.

(*z*) *Birtwhistle v. Vardell*, 2 Cl. & F. 571; 7 Cl. & F. 895.

(*zz*) See Dicey, Conflict of Laws (2nd ed.), 808.

(*a*) *Simonin v. Mallac*, 2 Sw. & Tr. 67; *Ogden v. Ogden*, (1908) P. 46, 68.

(*aa*) See *Re Johnson, Roberts v. Att.-Gen.*, (1903) 1 Ch. 821; *Law Quarterly Review*, vol. xxv. p. 145.

(*b*) See *Brook v. Brook*, 9 H. L. Cas. 193; *Sottomayor v. De Barros*, 3 P. D. 1, discussed in *Ogden v. Ogden*, (1908) P. 46, 73, 76.

(*c*) Dicey, Conf. of Laws, 634; *Catterall v. Catterall*, 1 Rob. Eccl. 304, 480.

plying with local forms must, however, be insuperable (*d*), and can usually arise only in a savage country or in a Mohammedan state where the personal law of European foreigners is their marriage law. It can also occur where religious scruples interpose an obstacle to the parties being married according to the rites and ceremonies of the *lex loci* (*e*).

Domiciled British subjects may contract a valid marriage in a foreign country without conforming to the requirements of the *lex loci* celebrations, provided that they conform to those prescribed by the Foreign Marriages Act, 1892 (*f*). One of the parties only need be a domiciled British subject (*g*).

Such marriages are to be solemnized by or before a marriage officer (*h*), who for the purposes of the Foreign Marriages Act, 1892, must be—

(i) Any officer authorized in that behalf by a secretary of state by authority in writing under his hand (“a marriage warrant”) (*i*).

(ii) Any officer who, under the marriage regulations approved by order in council, is authorized to act as such without any marriage warrant (*k*).

The following persons may be authorized by marriage warrant to be a marriage officer:—

(a) A British ambassador residing in a foreign country to the government of which he is accredited, and also any officer prescribed as an officer for solemnizing marriages in the official house of such ambassador (*l*).

(b) The holder of the office of British consul in any foreign country or place specified in the warrant (*m*).

(c) A governor, high commissioner, resident consular or other officer, or any person appointed in pursuance of the mar-

(*d*) *Kent v. Burgess*, 11 Sim. 361; *Lautour v. Teesdale*, 8 Taunt. 830; *Ruding v. Smith*, 1 St. Tr. (N. S.) 1053; 2 Hagg. Consist. 371.

(*e*) See Cruise on Dignities, 276; and *The Sussex Peerage Claim*, 11 Cl. & F. 152.

(*f*) 55 & 56 Vict. c. 23. For full text of Act, see *post*, p. 119.

(*g*) Sect. 1. See *Pertreis v. Tondear*, 1 Hagg. Con. Rep. 136.

(*h*) Sect. 8 (2).

(*i*) Sect. 11 (1) (a). If a marriage warrant refers to the office without designating the name of any particular person holding the office, then, while the warrant is in force, the person for the time being holding or acting in such office shall be a marriage officer (*Ibid.* (3)).

(*k*) *Ibid.* (b). The district of a marriage officer shall be the area within which the duties of his office are exerciseable, or any such less area as is assigned by the marriage warrant, or any other warrant, of a Secretary of State, or is fixed by the marriage regulations (*Ibid.*).

(*l*) *Ibid.* (2) (a).

(*m*) *Ibid.* (2) (b).

riage regulations to act in the place of a high commissioner or resident (*n*).

(d) The commanding officer on board one of H. M. ships on a foreign station (*o*).

(i) A British ambassador, if authorized by warrant, or any officer prescribed as a marriage officer (*p*), may solemnize a marriage in the ambassador's official house, or in the embassy chapel, if declared under the Act to be part of the official house (*q*).

If the marriage can be solemnized at a British consulate, it is not to be solemnized in the embassy house without the leave of the ambassador (*r*).

(ii) The holder of the office of the British consul in any foreign country or place specified in the warrant may solemnize marriage in his official house (*s*).

(iii) A governor, high commissioner, resident, consular or other officer, or a person appointed to act as a marriage officer in his place, if authorized by warrant, may solemnize marriage in his official house (*t*).

(iv) The commanding officer of one of H. M. ships on a foreign station, if authorized by warrant as a marriage officer, may solemnize marriage on board of her (*u*); and the provisions of the Act shall apply with the prescribed modifications (*x*).

The chaplain of one of H. M. ships may solemnize a marriage on board without a licence (*y*).

The commanding officer, before solemnizing a marriage, must be satisfied that at the port or place where the marriage is solemnized sufficient facilities do not exist for the solemnization of the marriage on land, either in accordance with the local law of the country or in accordance with the Foreign Marriage Act (*z*).

(*n*) Sect. 11 (2) (c).

(*o*) Sect. 12. Marriages on board His Majesty's ships on a foreign station will be set out more fully lower down.

(*p*) In such cases the application of the Act is not limited to places outside His Majesty's dominions (sect. 11 (2) (c)).

(*q*) Sect. 11 (2) (b). For the definition of an ambassador's "official house," see Foreign Marriages Act, 1892, Regulations, Art. 2. These Regulations are set out fully, *post*, pp. 126—130.

(*r*) Foreign Marriages Act, 1892, Regulations, Art. 3 (*post*, p. 126).

(*s*) Sect. 11 (2) (b). For the definition of a consular "official house," see Foreign Marriages Act, 1892, Regulations, Art. 7 (*post*, p. 127).

(*t*) Sect. 11 (2) (c). This section enables provision to be made in protectorates, which are not in strictness British territory.

(*u*) Sect. 12 (a).

(*x*) *Ibid.* (b).

(*y*) *Culling v. Culling and Nicholson*, (1896) P. 116.

(*z*) Regulations, Art. 10 (2) (*post*, p. 128).

A marriage officer shall not be required to solemnize a marriage, or to allow a marriage to be solemnized in his presence, if in his opinion the solemnization thereof would be inconsistent with international law or the comity of nations (*a*).

One of the parties intending marriage shall sign a notice stating the name, surname, profession, condition and residence of each of the parties, and whether each of the parties is or is not a minor, and give the notice to the marriage officer within whose district both of the parties have had their residence not less than one week next preceding, and the notice shall state that they have so resided (*b*).

This notice is to be filed by the marriage officer, and on payment of the proper fee a copy of it is to be entered in his book of notices and posted up in some conspicuous place in his office during fourteen consecutive days before such marriage is solemnized under it (*c*).

The like consent shall be required to such marriage as is required by law to marriages solemnized in England (*d*).

A caveat may be lodged with the marriage officer, and such marriage is not to be solemnized until the caveat is withdrawn, or the marriage officer is of opinion that it ought not to obstruct the marriage (*e*).

Such marriage must be solemnized within three months next after the date of the giving of the notice, or in the case of a caveat having been entered, next after the date of the receipt from the Secretary of State of his decision that the marriage may be solemnized (*f*).

Before such marriage is solemnized each of the parties shall appear before the marriage officer and make and subscribe an oath of belief of no impediment to the marriage by reason of kindred or alliance; that both have had for three weeks immediately preceding their usual residence within the district of the marriage officer; and where either of the parties not being a widower or a widow is under

(*a*) 55 & 56 Vict. c. 23, s. 19. A person whose marriage is refused to be solemnized has the right of appeal to a Secretary of State (*Ibid.*).

(*b*) *Ibid.* sect. 2.

(*c*) *Ibid.* sect. 3 (1).

(*d*) *Ibid.* sect. 4 (1).

(*e*) *Ibid.* sect. 5. In case of doubt, a copy of the caveat is to be sent to a Secretary of State, who, in his turn, shall refer it to the Registrar-General for his decision, which is to be communicated to the Secretary of State, and so on to the marriage officer (*Ibid.* (2)). A refusal of a marriage officer to solemnize, or allow the solemnization of, such marriage in his presence is subject to an appeal to a Secretary of State (*Ibid.* (3)). The marriage officer shall forthwith inform the parties of, and shall conform to, the decision given by the Registrar-General or Secretary of State (*Ibid.* (4)).

(*f*) *Ibid.* sect. 6.

twenty-one, that the consent of the proper parties has been obtained (*g*).

The punishment for making a false oath and notice is the penalties of perjury (*h*), and if any interest has accrued to the offending party by reason of the marriage, the Attorney-General for England may sue for its forfeiture (*i*). In the case of a marriage on board one of H. M. ships abroad not less than three weeks' notice of the intended marriage must have been given in such public manner or to such relatives or friends as satisfies the commanding officer that as much notice of the intended marriage has been given as would be given if the marriage took place in England, and that the marriage is not clandestine (*k*).

After the expiration of fourteen days such marriage may be solemnized at the official house of the marriage officer with open doors between 8 a.m. and 3 p.m. before two or more witnesses. Such marriage must be solemnized either by the marriage officer or in his presence, whether it is in accordance with the rites of the Church of England or after any other form or ceremony (*l*).

The marriage officer shall register such marriage in the proper register books, and the entry shall be signed by the marriage officer, by the person solemnizing the marriage if other than the marriage officer, by both the parties married, and by two witnesses (*m*).

After such marriage has been solemnized an objection merely on the ground of want of formalities or of the authority of the marriage officer will not be sustained (*n*). If a marriage is duly solemnized according to the *lex loci*, where one of the parties is a British subject, a British consul who has personally attended at such marriage may register it in accordance with the marriage regulations as having been so solemnized (*o*).

Where such marriage according to the local law of a foreign country is valid by English law, then before such marriage is solemnized in that country, whether in an embassy house or at a consulate, the marriage officer must be satisfied either (*a*) that both

(*g*) 55 & 56 Vict. c. 23, s. 7.

(*h*) *Ibid.* sect. 15.

(*i*) Sect. 14.

(*k*) For. Mar. Act, 1892, Regulations, Art. 10 (3) (*post*, p. 129).

(*l*) *Ibid.* sect. 8 (1), (2). For what forms of words to be used in the ceremony when such marriage is not solemnized according to the rites of the Church of England, see *Ibid.* (3).

(*m*) *Ibid.* s. 9 (2), (3). The marriage officer by whom or in whose presence such marriage is solemnized may ask of the parties the particulars required to be registered touching the marriage (*Ibid.* (5)).

(*n*) 55 & 56 Vict. c. 23, s. 13.

(*o*) *Ibid.* sect. 18.

the parties are British subjects; or (b) if only one of the parties is a British subject, that the other is not a subject or citizen of the country; or (c) if one of the parties is a British subject and the other a subject or citizen of the country, that sufficient facilities do not exist for the solemnization of the marriage in the foreign country in accordance with the law of that country (*p*).

If a marriage officer by reason of anything in this article refuses to solemnize or allow to be solemnized in his presence the marriage of any person requiring such marriage to be solemnized, that person shall have the right of appeal to a secretary of state (*q*).

Marriages within the lines of the British Army serving abroad.

Marriages solemnized within the lines of the British Army serving abroad by any chaplain or officer or other persons serving under the orders of the commanding officer of a British Army serving abroad shall be as valid in law as if the same had been solemnized within the United Kingdom, with a due observance of all forms required by law (*r*).

Marriages on board British mercantile ships at sea.

A marriage solemnized on board a British mercantile ship at sea between two British subjects by a minister in recognized orders would probably be held valid (*s*).

The Foreign Marriage Act, 1892, does not apply to the marriage of any of the Royal Family (*t*).

For marriages of British subjects in India, see *post*, *tit.* "India."

ROYAL MARRIAGE ACT, 1772 (*u*).

The members of the British Royal Family, male and female (under the age of twenty-five years), who are the descendants of the body of George II. (other than the issue of princesses who have married or may hereafter marry into foreign families), are under the disability of not being able to contract a valid marriage without obtaining the previous consent of the reigning sovereign(*x*).

(*p*) For. Mar. Act, 1892, Regulations, Art. 4 (1) (*post*, p. 126).

(*q*) *Ibid.* 4 (2).

(*r*) 55 & 56 Vict. c. 23, s. 22. This provision is irrespective of the status of the parties to the marriage. Under the Act the chaplain need not be in Anglican orders.

(*s*) See 57 & 58 Vict. c. 60, ss. 240 (6), 253 (1), (8).

(*t*) 55 & 56 Vict. c. 23, s. 23.

(*u*) 12 Geo. 3, c. 11 (*post*, p. 70).

(*x*) Sect. 1.

If any such descendant is over the age of twenty-five years, and persists in contracting a marriage disapproved of or dissented from by the reigning sovereign, then such descendant may give notice to the Privy Council, and at any time from the expiration of twelve calendar months after such notice may contract such marriage, which shall be valid unless both Houses of Parliament shall, before the expiration of such twelve months, expressly declare their disapprobation of such intended marriage (*y*).

The operation of this Act is not limited to marriages solemnized within the Kingdom of Great Britain and Ireland, but extends to marriages entered into by such descendants of George II. in foreign countries. The incapacity or disability is a personal one (*z*).

(*y*) Sect. 2.

(*z*) *Sussex Peerage Claim*, 11 Cl. & F. 85; 6 St. Tr. (N. S.) 79; 8 E. R. 1034.

Part III.

STATUTES RELATING TO MARRIAGE PASSED BY THE PARLIAMENTS OF ENGLAND, SCOTLAND, IRELAND, GREAT BRITAIN AND THE UNITED KINGDOM.

I.—STATUTES RELATING TO MARRIAGE IN ENGLAND.

NOTE.—*Certain of these Acts are expressed to apply also to Scotland or Ireland and to British possessions. See the particular statute. As to the extent to which English Acts apply to a particular possession, see post, under the head of the possession.*

25 HEN. 8, c. 21 (c) (1533—4).

An Acte for the Exoneration from Exactions paid to the See of Rome (d).

Sect. 2. *Neither the King nor his subjects shall sue to Rome for any licence, dispensation, &c.: instead thereof licences, dispensations, &c. may be granted by the Archbishop of Canterbury.*

Sect. 3. *Licences, dispensations, &c. may be granted by the Archbishop of Canterbury in all cases usually heretofore granted at Rome, but in unusual cases not without the assent of the King and Council.*

The said Archbishop and his successors, after good and due examination by them had, of the causes and qualities of the persons procuring for Licences, Dispensations, Compositions, Faculties, Delegacies, Rescripts, Instruments or other writings, shall have full power and authority by themselves or by their sufficient and substantial Commissary or Deputy, by their directions from time to time, to grant and dispose, by an instrument under the name and seal of the said Archbishop, as well to any of your subjects, as to the subjects of your heirs and successors, all manner Licences, Dispensations, Faculties, Compositions, Delegacies, Rescripts, Instruments, or other writings for any such cause or matter, whereof heretofore such Licences, Dispensations, Compositions, Faculties, Delegacies, Rescripts, Instruments or writings have been accustomed to be had at the See of Rome, or by the Authority thereof, or of any Prelate of this Realm.

Sect. 4. *Licences, the tax whereon at Rome did not exceed £4, may be granted by the Archbishop of Canterbury. Licences granted by the Archbishop of Canterbury and confirmed under the Great Seal to be “good and effectual in the law in all places, Courts and jurisdictions, as well spiritual and temporal, within this realm and elsewhere within our dominions” . . . “and all children procreated after any solemnization of any marriages had or done by virtue of such licences or dispensations shall be admitted, reputed and taken legitimate in all Courts, as well spiritual as temporal, and in all other places, and inherit the inheritance of their parents and ancestors within this your realm and all other your dominions, according to the laws and customs of the same . . .”*

Sect. 5. *The Archbishop of Canterbury to appoint clerks to register licences, &c., and confirmations thereof.*

Sects. 6, 7. *Provision for fixing and recording fees to be taken. Prohibition under penalty of entailing fees in excess of those fixed.*

(c) Revived and confirmed, 1 Eliz. c. 1 (*post*, p. 68).

(d) Referred to in 4 Geo. 4, c. 76, s. 20 (*post*, p. 75), as an Act concerning Peter Pence and dispensations.

28 HEN. 8, c. 7 (1536).

An Acte for the Establisshement of the Succession of the Imperyall Crowne of this Realme (e).

Sect. 7 (*f*). And furthermore syns many inconvenyences have fallen as well within this realme as in others by reason of marying within the degrees of mariage prohibited by Godys lawes, that is to saye: the sonne to mary the mother, or the stepmother carnally knowne by his father; the brother the sister; the father hys sonnes doughter, or his doughter's doughter; or the sonne to mary the doughter of his father procreate and borne by his stepmother; or the sonne to marye his aunte being his father's or mother's sister; or to mary his uncles wiffe carnally knowne by his uncle; or the father to mary his sonnes wiffe carnally knowne by his sonne; or the brother to mary his brother's wiffe carnally known by his brother; or any man married and carnally knowyng his wiffe to mary his wiffe's doughter or his wife's sonnes doughter or his wife's daughter's daughter or his wyfe's syster; and further to dilate and declare the meanyng of theis prohibicions. It is to be understande that if it chaunce any man to knowe carnally eny woman that then all and singler persones being in any degree of consanguynite or affynytie (as is above written) to any of the parties so carnally offendyng shalbe demed and adjudged to be within the cases and lymyttes of the said prohibicions of mariage; all which mariages all be it they be playnly prohibite and detested by the lawes of Gode, yet neverthesse at some tyme they have proceded under colours of dispensacions by man's power, which is but usurped and of ryght ought not to be graunted admytted ne allowed, for no man of what estate, degre, or condicion so ever he be hath power to dispense with Goddys lawes, as all the clergy of this realme in the said convocations and the moste parte of all the unyversities of Cristendome and we also doo affirme and thinke: Be it therefore enacted by auctorite aforsaid, according as it is declared and conteyned in the said Acte, made in the laste parliamente for the establisshments of your succession that no person nor persons, subjectes, or resiauntes of this realme or in any your domynions of what estate degre or dignitie so ever they be, shall from hensforth marie within the degrees afore rehersed, what pretence so ever shalbe made to the contrary thereof: And in case eny person or persones of what estate, dignitie, degre or condicion so ever they be, hath bene heretofore married within this realme, or in any other the Kynges domynions, within eny the degrees above rehersed, and by eny the archebisshoppes or mynistres of the Chirche of Englonde be separte from the bondes of suche unlawfull mariages, that then every suche sepacion shalbe good lawfull firme and permanente for ever, and not by any power, auctoritie, or meanes to be revokid or undoone hereafter. And that the childerne proceeding or procreate under such unlawfull mariage shall not be lawfull or legittymate, any foreyne lawes, lycences, dispensacions, or other thyng or thinges to the contrary thereof notwithstanding: And that in case ther be eny person or persones within this realme, or in any the kynges domynions, all redy married within eny the said degrees above specified and not yet separte from the bondes of suche unlawful mariage, that then every suche person so unlawfully married shalbe separte by the diffynityve sentence and judgmente of the archebisshoppes bisshoppes and other mynistres of the Churche of Englonde and in other your domynions within the lymyttes of their jurisdictiones and auctorities, and by none other power or auctorite; and that all sentences and judgementes, given and to be given by any archbishop, bisshopp, and other minister of the Chirche of Englonde or in any other the kynges domynions within the lymyttes of their

(e) For corresponding Irish Act, see *post*, p. 192.

(f) This section was repealed, 1 & 2 Ph. & M. c. 8, s. 4, and the repeal was confirmed by 1 Eliz. c. 1, s. 4. But it has been deemed necessary to consider the section in construing 32 Hen. 8, c. 38, *post*, p. 63 (see 1 Rev. Stat. (2nd ed.) 370, *n.*; *Brook v. Brook*, 9 H. L. C. 193; 27 L. J. Ch. 401; *R. v. Chadwick*, 11 Q. B. 173; 17 L. J. Q. B. 81; *Fenton v. Livingstone*, 3 Macq. (H. L.) 497, 533; *R. v. Dibdin*, (1910) P. 57, 117, *Moulton*, L. J.; 131, *Farwell*, L. J.

jurisdictions and auctorite, shall be diffynityve firme good and effectuall to all ententes, and be observed and obeied without suyng provocacions, appeales, prohibicions, or other processe from or to the Court of Rome to the derogacion therof, or contrary to the Acte made sithen the begynnyng of the laste parliamente for restraint of suche provocacions, appeales, prohibicions, and other processes.

28 HEN. 8, c. 16 (1536).

An Acte for the Release of such as have obteyned pretended Lycences and Dispensacions from the See of Rome (g).

Sect. 2. Yet notwithstanding, at the moste humble petition and intercession of the lordes spirituall and temporall and the comons in this present Parliament assembled, it may please the Kinges Majestie of his most gracious benignitie goodness and blessed disposicion, that it may be enacted by auctoritie of this Parliament that all mariages, hadd and solempnized within this realme or in any other the Kinges domynions before the thirde day of November in the xxvj year of the Kinges most gracious reign, wherof there is no devorce or seperacion hadd by the ecclasticall lawes of this realme, and whiche mariages be not phibited by Goddis lawes, lymytted and declared in the Acte made in this psent Parliament for thestablisshment of the Kinges succession (*h*), or otherwise by Holy Scripture, shall be by auctoritie of this present Parliamente good lafull and effectuall, and shalbe, from the begynnyng of suche mariages, reputed esteemed taken adjudged receyved approved and alowed, by the auctoritie of this present Parliament, and to all and singler purposes effectes and ententes, as good as sufficient and as available as & though no impedyments of matrymony hadd ev ben betwene them that have contracted and solempnised suche mariages; and that all childerne procreated and to be procreated in and under such mariages shall be lawfull to all ententes and purposes.

Proviso for marriages, had before 3 Nov. 26 Hen. 8 (1534).

32 HEN. 8, c. 38 (1540).

Concerning Pre-contracts and Degrees of Consanguinitie (i).

Wheras heretofore the usurped power of the bishop of Rome hathe alwayes entangled and troubled the mere jurisdiction and legal power of this realme of England, and also unquietid muche the subjectis of the same by his usurped power in them, as by making that unlafull whiche by Goddis wourde is lafull bothe in mariages and other thinges as herafte shall appere at more length; and till nowe of late in our souveraine lordes time, whiche is otherwise by larning tawght than his predecessours in tymes past of longe tyme have ben, hath so contynued the same, wherof yet some sparkis be lefte whiche herafte might kindle a greater fyre and so remayning his power not to seme utterly extincte, therefore it is thought mooste convenient to the Kinges Highnes his lordis spirituall and temporall with the comons of his realme assembled in this present Parliament that twoo thinges specially for this tyme be with diligence provided for, whereby many inconveniences hath ensued and many moo els mought ensue and followe: As where heretofore divers and many personnes after longe contynuances together in matrimonye without any allegation of either of the parties or anny other at their mariage whie the same matrimony should not be good juste and lafull, and after the same matrimony solemnised and consummate by carnal knowledge, and also some tyme fruite of children ensued of the same mariage, have nevertheless by an unjuste lawe of the bishop of Rome, whiche is that upon pretence of a former contracte made and not consummate by carnall copulation, for profe wherof twoo witnes by that

Usurped power of the See of Rome heretofore exercised

by dissolution of marriages on pretence of pre-contract;

(*g*) For corresponding Irish Acts *vide post*, pp. 192, 193.

(*h*) *I.e.*, 28 Hen. 8, c. 7, s. 7 (*ante*, p. 62).

(*i*) Repealed as to pre-contracts by 2 & 3 Edw. 6, c. 23, s. 1 (*post*, p. 65). For corresponding Irish Act, *vide post*, p. 193.

by dispensa-
tions for
marriage
between
cousins, &c.

Evils result-
ing there-
from.

Marriages
contracted by
persons not
prohibited by
God's law,
solemnized
and consum-
mated, shall
not be dis-
solved for
any pre-
contract not
consummated.

lawe were onely required, ben divorsed and separate contrairie to Goddis lawe, and so the true matrimony bothe solemnised in the face of the Church and consummate with bodily knowledge and confirmed also with the fruite of children had betwene them clearly frustrate and dissolved: Further also by reason of other prohibitions than Goddis lawe admitteth, for their lucre by that courte invented, the dispensation whereof they alwaies reservid to them selfis, as in kynnerede or affinitie betwene cousyn germaynes and so to fourth and fourth degree carnall knowledge of anny of the same kynne or affinitie bifore in suche outwarde degrees which elys were lafull and be not prohibited by Goddis lawe, and all bicause they wolde gett monney by it and kepe a reputation to their usurped jurisdiction; whereby not onely muche discord betwene lafull married personnes hath contrarie to Goddis ordinance arrisen, muche debate and sute at the lawe with the wrongfull vexation and greate damage of the innocent partie hath ben procured, and many juste mariages brought in doubte and daunger of undoyng and also many tymes undoone and lafull heires disherited, wherof there had never els but for his vayne glorious usurpation ben moved any suche question, syns fredome in them was geven us by Goddis lawe which ought to be most sure and certein, but that notwithstanding mariages have been brought into suche an uncertainty thereby that no mariage coule be so surely knytt and bounden but it shulde lye in either of the parties power and arbitre, casting away the feare of God, by meanes and compasses to prove a precontracte a kynnerede an alliance or a carnall knowlege to defeate the same, and so undre the pretense of thise allegations afore rehersed to lyve all the daies of their lyves in detestable adultery to thutter destruction of their owne soules and the provocations of the terrible wrath of God uppon the places where suche abominacions were suffred and used: Be it therefore enacted by the King our souveraine lorde the lordes spirituall and temporall and the comons in this present Parliament assembled and by auctoritie of the same, that from the firste day of the monneth of July next ensueying in the yere of our Lorde God a thousande fyve hundred and forty, all and every suche mariages, as within this Church of England shalbe contracted betwene lafull personnes, as by this Acte wee declare all personnes to be lafull that be not prohibited by Goddis lawe (*k*) to mary, suche mariages being contracte and solemnised in the face of the Church and consummate with bodily knowledge or fruite of childerne or childe being had therin betwene the parties so married, shalbe by auctoritie of this present Parliament aforesaid demed judged and taken to be lafull good juste and indissoluble, notwithstanding any precontracte or precontractis of matrimony not consummate with bodily knowledge, whiche either of the personnes so married or both shalhave made with anny other personne or personnes, bifore the tyme of contracting that mariage which is solemnised and consummate or wherof suche fruite is ensued or may ensue as afore; and notwithstanding any dispensation prescription lawe or other thinge graunted or confirmed by Acte or otherwise: And that no reservation or prohibition, Goddis lawe except, shall trouble or impeche anny mariage without the Leviticall degrees; and that no person of what estate degree or condition soever he or she be shall afre the first day of the (said) monneth of July aforesaid be admitted in any of the spirituall courtis within this the Kinges realme or any his graces other landis and dominions to any proces plea or allegation contrarie to this foresaid Acte.

2 & 3 EDW. 6, c. 21 (1548).

An Acte to take awaye all posityve Lawes againste Mariage of Priestes.

Considera-
tions respect-
ing the
celibacy of
priests.

Sect. 1. Although he it were not onely better for thestymacion of priestes and other Ministers in the Church of God to lyve chaste sole and separate from the companye of wyemen and the bonde of mariage, but also therby they myght the

(*k*) See the Table of Prohibited Degrees (*ante*, pp. 14, 15), and *R. v. Dibdin*, (1910) P. 57, 107. Until Lord Lyndhurst's Act (*post*, p. 81), such marriages, though void *ab initio*, could be declared void only by Ecclesiastical Courts, and the jurisdiction of these Courts ceased on the death of either party. *R. v. Dibdin*, *l. c.* 108.

better extend to thadministracion of the Gospell, and be lesse entricated and troubled withe the chardge of householde, beinge free and unburdened from the care and coste of fyndinge wyef and children, and that it were most to be wished that they woulde willingly and of their selves endeavor them selfe to a perpetuall chastytie and abstynence from the use of wymen, yet forasmuche as the contrarie hathe rather byne seene, and suche unclesnes of lyvinge and other greate inconveniences, not mete to be rehersed, have followed of compelled chastytie and of suche lawes as have prohibited those suche persones the godlye use of mariage, it were better and rather to be suffred in the common wealthe that those whiche coulde not conteyne shoulde after the counsell of Scripture lyve in holie mariage, than faynedlye abuse withe worse enormytie outwarde chastytie or syngle lyef: Be it therefore enacted by our Sovereigne Lorde the Kinge, with thassent of the lordes spirituall and temporall and commons in this present Parliament assembled and by thauctoritie of the same, that all and everie lawe and lawes posityve, canons constitucions and ordynances heretofore made by thauctoritie of man onlye, whiche dothe prohibite or forbyd mariage to any ecclesiasticall or spirituall person or persons, of what estate condicion or degree they be, or by what name or names soever they be called, whiche by Gods law maye lauffully marrye in all and everie article braünche and sentence, concerninge onlye the prohibicion for the mariage of the persones aforesaide shalbe utterly voyde and of none effecte: And that all manner of forfeitures paynes penalties crymes or actions whiche were in the saide lawes conteyned, and the same did followe, concerninge the prohibicion for the mariage of the persones aforesaid, be clerely and utterly voyde frustrate and of none effecte, to all intents construccion and purposes, aswell concerninge mariage heretofore made by any of the ecclesiasticall or spirituall persones aforesaide, as also suche whiche hereafter shalbe dulye and lauffullye had celebrate and made betwixte the persons whiche by the lawes of God may lawfullye marrye.

Laws, canons, &c. prohibiting the marriage of priests, declared void.

2. Provided always that this Acte or any thinge therin conteyned shall not extende to give any libertye to any person to marrye without askinge in the churche, or without any other ceremonye beinge appoynted by thordre prescribed and sett fourthe in the booke intituled the Booke of Comon Prayer and thadmynistracion of the Sacraments; any thinge above mentioned to the contrarie in anye wise notwithstanding (1).

None shall marry without banns, &c.

2 & 3 EDW. 6, C. 23 (1548).

An Acte for the repeale of a Statute towchinge Pre-contracts.

Whereas in the xxxijthe yere of the raigne of the late Kinge of famous memorie Kinge Henrie Theight, because that many inconveniences had chaunced in this realme by breakinge and dissolvinge of good and lauffull marriages, yea whereupon also sometyme yssue and children had followed, under the colour and pretence of a former contracte made withe an other, the whiche contracte diverse tymes was but verie slenderlie proved, and often but surmysed by the malice of the partie who disired to be dissolved from the mariage whiche lyked not and to be copuled withe an other, there was an Acte made that all and everie suche marriages as within the Church of Englonde shoulde be contracted and solempnized in the face of the Church and consummate withe bodilye knowledge or fruyte of children or childe beinge had betwene the parties so married, shoulde be by the auctoritye of the saide Parliament demed judged and taken to be lauffull good juste and indissoluble, notwithstandinge any precontracte or precontract of matrimonye, not consummate withe bodilye knowledge, whiche either of the persons so married or bothe had made withe any other person or persons before the time of contractinge that mariage whiche ys solempnized or consummated or whereof suche fruite ys ensued or maye ensue, as by the same Acte more playnly maye appeare: Sithe the tyme of the whiche Acte, although the same was godly ment, the

Recital of stat. 32 Hen. 8, c. 38, against the dissolution of marriages consummated, under pretext of pre-contract not consummated;

abuse of the said Act:

(1) Sect. 3 was repealed in 1887 (S. L. R.).

unrulynes of men hathe ungodlye abused the same and divse inconvenience intollerable in manner to Christian eares and eyes followed thereupon, women and men breaking their own promyses and faythes made by the one unto the other, so sett upon sensualitie and pleasure, that yf after the contracte of matrymonye they might have whom they more favored and desyred they could be contented by lightnes of their nature to overturne all that they had done afore, and not afearde in manner even from the verie church doore and marriage feaste, the man to take an other spowse and the espowse to take an other husbände, more for bodilie lustes and carnall knowledge then for suertye of faythe and truethe, or havinge God in their good remembrance contempnyng manye tymes also the comaundment of the ecclesiasticall judge forbyddinge the parties havinge made the contracte to attempte or doe anything in prejudice of the same; be it therefore enacted by the Kinges Highnes the Lordes Spirituall and Temporall and the Comons in this present Parliament assembled, that:

recited Act
repealed as to
pre-contracts,
on which the
judge spiri-
tual may
decide, &c.

1. As concerninge pre-contractes the said former estatute shall from the fyrste daye of Maie next comynge cease be repealed and of noe force or effecte, and be reduced to the state and ordre of the Kinges ecclesiasticall lawes of this realme, whiche ymediatlye before the making of the said estatute in this case were used in this realme; so that from the said firste daye of Maie, when any cause or contracte of marriage is pretended to have bene made, it shalbe lafull to the Kinges ecclesiasticall judge of that place to heare and examyne the said cause, and havinge the saide contracte sufficiently and lafully proved before him, to give sentence for matrymonye commanding ^(u) solempnizacon cohabitation consumacion and tractacion as becometh man and wyef to have; withe inflictinge all suche paynes upon the disobedients and disturbers thereof, as in times past before the saide statute, the Kinges ecclesiasticall judge by the Kinges ecclesiasticall lawes ought and might hafe done if the said statute had never bene made; any clause article or sentence in the said statute to the contrarie in any wise notwithstandinge.

Proviso for
marriages had
before this
Act.

2. Provided alwayes and be it enacted, that this Acte doe not extende to disannull dissolve or breake any marriage, that hathe or shalbe solempnized and consummated before the saide firste daye of Maie next ensuyng, by title or color of any precontracte; but that they be and be demed of lyke force and effecte to all intents construccions and purposes as yf this Acte had never bene had ne made; any thinge in this present Acte notwithstandinge.

Recited Act
32 Hen. 8,
c. 38, con-
firmed in all
other respects.

3. Provided also that this Acte doe not extende to make good any of the other causes to the dissolution or disanullinge of matrimonye whiche be in the said Acte spoken of and disannulled, but that in all other causes and other thinges there mencioned, the saide former Acte of the xxxijth yere of the late Kinge of famous memorie doe stand and remayne in his full strengthe and power; any thinge in this Acte notwithstandinge.

5 & 6 EDW. 6, c. 12 (1551).

An Acte for the declaration of a Statute made for the marriage of Priests and for the legittimation of their children.

Albeit that at the session of this Parliament holden by prorogacion at Westminster the fourth daye of November in the second yere of the raigne of the Kings Majestie that nowe is, it was ordeyned and enacted by thauctoritie of the same Parliament ^(o), that all and everie lawe and lawes positive, cannons constitutions and ordynances before that made by thauctoritie of man onely, whiche then did prohibite and forbyde mariage to any ecclesiasticall and spirituall person or persons of what estate or condicion or degre they then were, or by what name or names soever they then were called, whiche by Gods lawe myght lawfullye marrye, and all and everie article braunche and sentence concerning onely the prohibicion for marriage of the persons aforesaide, sholde be utterlie

⁽ⁿ⁾ This power is taken away by 4 Geo. 4, c. 76, s. 27 (*post*, p. 77).

^(o) 2 & 3 Edw. 6, c. 21 (*ante*, p. 64).

voyde and of none effecte; and that all manner of forfeitures paynes penalties crymes or actions whiche were in the said lawes conteyned or of the same did followe, concernynge the prohibicion for the marriage of the persons aforesaide, sholde be clerelye and utterlie voyde frustrate and of none effecte to all intents constructions and purposes, aswell concerninge mariage afore that tyme made by anye of the ecclesiasticall or spirituall persons aforesaid, as also such which thereafter sholde be dulye and lauffully had celebrated and made betwixt the persons whiche by the lawes of God myght lauffullie marrie: Yet synce the makinge of the saide Acte divers evil disposed persons perversely takinge occasion of certeyne wordes and sentences in the same Acte comprised, have and doe untrulye and verie slanderouslye report of priests matrimonye, sayinge that the same statute is but a permyssion of a priests matrimonye as usurie and other unlauffull things be nowe permytted for the eschewinge of greater inconvenience and evills, so that therby the lauffull matrimonye of priests in the opynion of manye, and the children procreat and borne in such lauffull matrimonye rather be of a great nombre of the Kinges subjectes accompted as bastardes than lauffullie borne, to the great slaunder perill and disherison of suche children; whiche untrue slanderous reproche of holie matrimonye dothe not onely redounde to the highe dishonor of Almyghtie God but also to the Kinges Majesties dishonor and his High Corte of Parliament and the lerned clergie of this realme, who have determyned the same to be most lauffull by the lawe of God in their Convocation, as well by their common assent as by the subscription of their handes; And that most of all is to be lamented throughe suche uncomelye raylinges of matrimonye and slaunderous reproches of the clergie, the worde of God is not heardewith reverence, followed with diligence, the godlie proceedinges of the Kinges Majestie not received withe due obeydience, and therbye the wealthie men of this realme discouraged to nourish and bringe up their children in learninge so as it is to be feared least in place of good learning and knowledge, shall crepe in ignorance, and for learned men ambitious men and flatterers, to the great displeasure of Almightye God and to the perill of the hole state of Gods true religion within this realme, if spedy remedy be not provyded herein: Therefore it is enacted by the Kinge our Soveraigne Lorde with thassent of the Lordes Spirituall and Temporall and the Comons in this present Parliament assembled, and by auctoritie of the same Parliament, that the matrimonye of all and everie priest and other ecclesiasticall and spirituall persons and person heretofore had celebrated and made, and the matrimonye of everie priest and other ecclesiasticall and spirituall person which shall hereafter dulye be had celebrated and made, shalbe adjudged demed and taken for true just and lauffull matrimonye to all intents constructions and purposes: And that all and everie children and childe borne in anye suche matrimonye shalbe demed judged reputed and taken to all intents constructions and purposes to be borne in lauffull matrimonye and to be legittymate and inheritable to landes tenementes and other hereditamentes from and by anye of their fathers mothers and other auncetors; in lyke manner and fourme to all intentes constructions and purposes as anye other children borne in lauffull matrimonye betwixt any of the Kinges laye subjectes be inheritable.

Sect. 2. And that by the auctoritie aforesaide, aswell all and everie priest and other ecclesiasticall and spirituall person and persons be and shalbe inhabled to be tenants by the curtesie after the deathe of their wiefes of such landes tenementes and other hereditamentes as their wiefes shall happen to be seased of, of estate in fee simple or estate in fee tayle generall duringe thespouselles; as also everie wief of everie such priest and other ecclesiasticall person shalbe inhabled to clayme demaunde have and enjoye dower of the landes tenementes and other hereditamentes whereof her husband duringe the espouselles betwene them was seised of, of estate in fee simple or fee taile generall in his owne righte; in lyke manner and forme to all intentes constructions and purposes as any other husbände or wief maye or myght clayme demaunde have or enjoye; anye lawe statute ordynauce cannon constitucion prescripcion or custome had made exercised or used in this realme to the contrarye in any wise notwithstandinge.

Sect. 3. Provided alwaye, that this Acte nor anythinge therein conteyned shall extende to give libertie to anye person to marrie without askinge in the church, or without the ceremonye: accordinge to the Booke of Comon Prayer and

Admynistracion of the Sacramentes nor shall make anye such matrimonye, already made or hereafter to be made, good, whiche are prohibited by the lawe of God for anye other cause (*p*).

1 ELIZ. C. 1 (1558).

An Acte restoring to the Crowne thaŷcyunt jurisdiction over the State Ecclesiastical and Spūall, and abolyshing all Forreine Power repugnant thereto (q).

Sect. 2. Recites 25 Hen. 8, c. 21 (*ante*, p. 61), and other Acts, and enacts that "all and every branches wordes and sentences in the said several Acts and statutes contayned by authority of this present Parliament at all times from and after the last day of this Session of Parliament shall be revived and shall stand and be in full force and strength to all intent construccion and purposes. . . ."

Stat. 32 Hen.
8, c. 38, as to
marriages, as
amended by
2 & 3 Edw. 6,
c. 23.

Sect. 3. And . . . that so muche of one Acte or statute made in the xxxijth yere of the reigne of yor sayd dere father King Henrye Theight, entituled, An Acte concerning precontracts of mariages and touching degrees of consanguinitee, as in the time of the late King Edwarde the Syxthe your Highnes most dere brother by one other Acte or statute (*qq*) was not repealed . . . may from hensforth lykewise stand and bee revived and remayne in their full force and strengthe to all intents and purposes . . . (*r*).

CONSTITUTIONS AND CANONS ECCLESIASTICAL OF 1603 (*s*).

62. *Ministers not to marry any persons without banns or licence.*

No minister, upon pain of suspension *per triennium ipso facto*, shall celebrate matrimony between any persons, without a faculty or licence granted by some of the persons in these our constitutions expressed, except the banns of matrimony have been first published three several Sundays, or Holy-days, in the time of Divine Service, in the parish churches and chapels where the said parties dwell, according to the Book of Common Prayer. Neither shall any minister, upon the like pain, under any pretence whatsoever, join any persons so licensed in marriage at any unseasonable times, but only between the hours of eight and twelve in the forenoon (*t*), nor in any private place, but either in the said churches or chapels where one of them dwelleth, and likewise in time of Divine Service; nor when banns are thrice asked, and no licence in that respect necessary, before the parents or governors of the parties to be married, being under the age of twenty and one years, shall either personally, or by sufficient testimony, signify to him their consents given to the said marriage.

63. *Ministers of exempt churches not to marry without banns, or licence.*

Every minister, who shall hereafter celebrate marriage between any persons contrary to our said constitutions, or any part of them, under colour of any peculiar liberty or privilege claimed to appertain to certain churches and chapels, shall be suspended *per triennium* by the ordinary of the place where the offence shall be committed. And if any such minister shall afterwards remove from the place where he hath committed that fault, before he be suspended, as is

(*p*) Sect. 4 was repealed in 1887 (S. L. R.).

(*q*) As to Ireland, *vide post*, p. 193.

(*qq*) *Ante*, p. 65.

(*r*) The rest of the section revived 37 Hen. 8, c. 17, as to the exercise of ecclesiastical jurisdiction by doctors of civil law who were married. That Act was repealed in 1863 (S. L. R.).

(*s*) As to the history of these canons, see *R. v. Dibdin*, (1910) P. 57, 63. They appear to bind the clergy save so far as inconsistent with Statute Law, *ibid.*; *Middleton v. Crofts* (1736), 2 Atk. 650. They bind the laity in so far as they are declaratory of the ancient usage of the Church of England, but not further or otherwise: *Cawdrey's Case*, 5 Co. Rep. 32 *b*; *Middleton v. Crofts*, *l. c.* at p. 653; Com. Dig. Canons (C.); *R. v. Dibdin*, (1910) P. 57, 138, Farwell, L. J.

(*t*) See now 49 & 50 Vict. c. 14 (*post*, p. 119).

aforesaid, then shall the bishop of the diocese, or ordinary of the place where he remaineth, upon certificate under the hand and seal of the other ordinary, from whose jurisdiction he removed, execute that censure upon him.

70. *Ministers to keep a register of christenings, weddings, and burials.*

99. *None to marry within the degrees prohibited.*

No person shall marry within the degrees prohibited by the laws of God, and expressed in a table set forth by authority in the year of our Lord God 1563 (*u*). And all marriages so made and contracted shall be judged incestuous and unlawful, and consequently shall be dissolved as void from the beginning, and the parties so married shall by course of law be separated. And the aforesaid Table shall be in every church publicly set up and fixed at the charge of the parish.

100. *None to marry under twenty-one years, without their parents' consent.*

No children under the age of one and twenty years complete shall contract themselves, or marry without the consent of their parents, or of their guardians and governors, if their parents be deceased.

101. *By whom licences to marry without banns shall be granted, and to what sort of persons.*

No faculty or licence shall be henceforth granted for solemnization of matrimony betwixt any parties, without thrice open publication of the banns, according to the Book of Common Prayer, by any person exercising any ecclesiastical jurisdiction, or claiming any privileges in the right of their churches; but the same shall be granted only by such as have episcopal authority, or the commissary for faculties, vicars-general of the archbishops and bishops, *sede plena*; or *sede vacante*, the guardian of the spiritualities, or ordinaries exercising of right episcopal jurisdiction in their several jurisdictions respectively, and unto such persons only as be of good state and quality, and that upon good caution and security taken (*v*).

102. *Security to be taken at the granting of such licences, and under what conditions.*

The security mentioned shall contain these conditions:—First, that, at the time of the granting every such licence, there is not any impediment or pre-contract (*w*), consanguinity, affinity, or other lawful cause to hinder the said marriage. Secondly, that there is not any controversy or suit depending in any Court before any ecclesiastical judge, touching any contract or marriage of either of the said parties with any other. Thirdly, that they have obtained thereunto the express consent of their parents, (if they be living,) or otherwise of their guardians or governors. Lastly, that they shall celebrate the said matrimony publicly in the parish church or chapel where one of them dwelleth, and in no other place; and that between the hours of eight and twelve in the forenoon (*x*).

103. *Oaths to be taken for the conditions.*

For the avoiding of all fraud and collusion in the obtaining of such licences and dispensations, we further constitute and appoint, that before any licence for the celebration of matrimony without publication of banns be had or granted, it shall appear to the judge, by the oaths of two sufficient witnesses, one of them to be known either to the judge himself, or to some other person of good reputation then present and known likewise to the said judge, that the express consent of the parents, or parent, if one be dead, or guardians or guardian of the parties, is thereunto had and obtained. And furthermore, that one of the parties personally swear, that he believeth there is no let or impediment of pre-contract (*w*), kindred, or alliance, or of any other lawful cause whatsoever, or any suit commenced in any Ecclesiastical Court, to bar or hinder the proceeding of the said matrimony, according to the tenure of the foresaid licence.

104. *An exception for those that are in widowhood.*

If both the parties which are to marry being in widowhood do seek a faculty

(*u*) As to effect on this Canon of 7 Edw. 7, c. 47 (*post*, p. 162), see *R. v. Dibdin*, (1910) P. 57.

(*v*) As to this caution and security, see now 4 Geo. 4, c. 76, s. 15 (*post*, p. 74).

(*w*) Pre-contract is no longer an impediment, 4 Geo. 4, c. 76, s. 27 (*post*, p. 77); *Beachey v. Brown*, E. B. & E. 796.

(*x*) See now 49 & 50 Vict. c. 14 (*post*, p. 119).

for the forbearing of banns, then the clauses before mentioned, requiring the parents' consent, may be omitted: but the parishes where they dwell, both shall be expressed in the licence, as also the parish named where the marriage shall be celebrated. And if any commissary for faculties, vicars-general, or other the said ordinaries, shall offend in the premises, or any part thereof, he shall, for every time so offending, be suspended from the execution of his office for the space of six months; and every such licence or dispensation shall be held void to all effects and purposes, as if there had never been any such granted; and the parties marrying by virtue thereof shall be subject to the punishments which are appointed for clandestine marriages.

THE ROYAL MARRIAGES ACT, 1772 (v).

12 GEO. 3, c. 11.

An Act for the better regulating the future Marriages of the Royal Family.

Most gracious Sovereign,

Whereas your Majesty, from your paternal affection to your own family, and from your royal concern for the future welfare of your people, and the honour and dignity of your crown; was graciously pleased to recommend to your Parliament to take into their serious consideration, whether it might not be wise and expedient to supply the defect of the laws now in being, and by some new provision more effectually to guard the descendants of his late Majesty King George the Second (other than the issue of princesses who have married, or may hereafter marry, into foreign families) from marrying without the approbation of your Majesty, your heirs and successors, first had and obtained, we have taken this weighty matter into our serious consideration; And being sensible that marriages in the royal family are of the highest importance to the state, and that therefore the kings of this realm have ever been entrusted with the care and approbation thereof, and being thoroughly convinced of the wisdom and expediency of what your Majesty has thought fit to recommend upon this occasion; We, your Majesty's most dutiful and loyal subjects, the lords spiritual and temporal, and commons, in this present Parliament assembled, do humbly beseech your Majesty that it may be enacted and be it enacted, etc.

Marriage of descendants of George II. without previous consent in writing of reigning Sovereign void.

1. No descendant of the body of his late Majesty King George the Second, male or female, (other than the issue of princesses who have married, or may hereafter marry, into foreign families,) shall be capable of contracting matrimony, without the previous consent of his Majesty, his heirs or successors, signified under the great seal and declared in council (which consent, to preserve the memory thereof, is hereby directed to be set out in the licence and register of marriage, and to be entered in the books of the Privy Council); and [that] every marriage, or matrimonial contract, of any such descendant, without such consent first had and obtained, shall be null and void to all intents and purposes whatsoever (w).

Proviso as to such descendants being over twenty-five years of age.

2. Provided always . . . that in case any such descendant of the body of his late Majesty King George the Second, being above the age of twenty-five years, shall persist in his or her resolution to contract a marriage disapproved of, or dissented from, by the King, his heirs or successors; that then such descendant, upon giving notice to the King's Privy Council, which notice is hereby directed to be entered in the books thereof, may, at any time from the expiration of twelve calendar months after such notice given to the Privy Council as aforesaid, contract such marriage; and his or her marriage with the person before

(v) This Act operates on those descendants of George the Second who are subject to it, irrespective of the place in which they seek to contract marriage (*Sussex Peerage Claim*, 6 St. Tr. (N. S.) 79). Marriages of members of the royal family were excepted from Lord Hardwicke's Act (26 Geo. 2, c. 33), and are excepted from subsequent Marriage Acts.

(w) *Vide Sussex Peerage Claim*, 6 St. Tr. (N. S.) 79; 11 Cl. & F. 85; 8 E. R. 1034.

proposed and rejected, may be duly solemnized, without the previous consent of his Majesty, his heirs or successors; and such marriage shall be as good, as if this Act had never been made, unless both Houses of Parliament shall, before the expiration of the said twelve months, expressly declare their disapprobation of such intended marriage.

3. And . . . every person who shall knowingly or wilfully presume to solemnize or to assist or be present at the celebration of any marriage with any such descendant, or in his or her making any matrimonial contract, without such consent as aforesaid first had and obtained, except in the case above mentioned, shall being duly convicted thereof, incur and suffer the pains and penalties ordained and provided by the Statute of Provision and Premunire made in the sixteenth year of the reign of King Richard the Second (x).

Penalty on persons solemnizing or assisting at celebration of marriage forbidden by sect. 1.

THE MARRIAGE OF LUNATICS ACT, 1811.

51 GEO. 3, C. 37.

An Act further to prevent the Marriage of Lunatics. [31st May, 1811.]

Whereas an Act was made in the Parliament of Great Britain, in the fifteenth year of the reign of his late Majesty King George the Second (y), to prevent the marriage of lunatics: And whereas it is expedient that the provisions of the said Act should be extended to Ireland; be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that, from and after the expiration of ten days after the passing of this Act, in case any person who has been, or at any time hereafter shall be found a lunatic by any inquisition taken or to be taken by virtue of a commission under the Great Seal of Great Britain (yy), or the Great Seal of Ireland respectively, or any lunatic or person under a phrenzy, whose person and estate by virtue of any Act of Parliament now or hereafter shall be committed to the care and custody of particular trustees, shall marry before he or she shall be declared of sane mind by the Lord High Chancellor of Great Britain or Ireland, or the Lord Keeper or Lords Commissioners of the Great Seal of Great Britain or Ireland for the time being, or such trustees as aforesaid, or the major part of them respectively, as the nature of the case shall require, every such marriage shall be and is hereby declared to be null and void to all intents and purposes whatsoever.

Persons found lunatic marrying before declared sane, marriage to be void.

THE MARRIAGE ACT, 1823 (z).

4 GEO. 4, C. 76.

An Act for amending the Laws respecting the Solemnization of Marriages in England. [18th July, 1823.]

[Whereas it is expedient to amend the laws respecting the solemnization of marriages in England; be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the first day of November next ensuing the passing of this Act, so much of an Act passed in the twenty-sixth year of the reign of King George the Second, intituled "An Act for the better preventing of Clandestine Marriages" (a), as was in force immediately before the passing

Repeals.

(x) 16 Rich. 2, c. 5; Stat. Rev. (2nd ed.), vol. 1, p. 173.

(y) 15 Geo. 2, c. 30 (E), repealed in 1873 (36 & 37 Vict. c. 91, Stat. Law Rev.).

(yy) As to the present practice with reference to the exercise of the Lord Chancellor's jurisdiction in lunacy, see the Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 107, 108. Wood Renton on Lunacy, 326, 916.

(z) This Act took effect on November 1st, 1823.

(a) 26 Geo. 2, c. 33 (Lord Hardwicke's Act).

of this Act; and also an Act passed in the present session of Parliament, intituled "An Act to repeal certain Provisions of an Act passed in the Third Year of His present Majesty, intituled 'An Act to amend certain Provisions of the Twenty-sixth of George the Second, for the better preventing of Clandestine Marriages'" (b); shall be and the same are hereby repealed; save and except as to any acts, matters, or things done under the provisions of the said recited Acts, or either of them, before the said first day of November, as to which the said recited Acts shall respectively be of the same force and effect as if this Act had not been made; save also and except so far as the said recited Acts, or either of them, repeal any former Act, or any clause, matter, or thing therein contained] (c).

Banns, where, when, and how published, and marriage to be solemnized where banns published.

2. All banns of matrimony shall be published in an audible manner in the parish church, or in some public chapel, in which chapel banns of matrimony may now or may hereafter be lawfully published (d), of or belonging to such parish or chapelry wherein the persons to be married shall dwell, according to the form of words prescribed by the rubrick prefixed to the office of matrimony in the Book of Common Prayer, upon three Sundays preceding the solemnization of marriage, during the time of morning service, or of evening service (if there shall be no morning service in such church or chapel upon the Sunday upon which such banns shall be so published), immediately after the second lesson; and whensoever it shall happen that the persons to be married shall dwell in divers parishes or chapelries, the banns shall in like manner be published in the church or in any such chapel as aforesaid belonging to such parish or chapelry wherein each of the said persons shall dwell; and that all other the rules prescribed by the said rubrick concerning the publication of banns and the solemnization of matrimony, and not hereby altered, shall be duly observed; and that in all cases where banns shall have been published, the marriage shall be solemnized in one of the parish churches or chapels where such banns shall have been published, and in no other place whatsoever.

Bishop, with consent of patron and incumbent, may authorize publication of banns in any public chapel.

3. The bishop of the diocese, with the consent of the patron and the incumbent of the church of the parish in which any public chapel, having a chapelry thereunto annexed, may be situated, or of any chapel situated in an extra-parochial place, signified to him under their hands and seals respectively, may authorize, by writing under his hand and seal, the publication of banns and the solemnization of marriages in such chapel for persons residing within such chapelry or extra-parochial place respectively; and such consent, together with such written authority, shall be registered in the registry of the diocese (e).

Notice to be placed in such chapel.

4. Provided always, that in every chapel in respect of which such authority shall be given as aforesaid, there shall be placed in some conspicuous part of the interior of such chapel a notice in the words following; "Banns may be published and marriages solemnized in this chapel."

Provisions relative to marriage registers extended to chapels so authorized as aforesaid.

5. Provided always, that all provisions now in force, or which may hereafter be established by law, relative to providing and keeping marriage registers in any parish churches, shall extend and be construed to extend to any chapel in which the publication of banns and solemnization of marriages shall be so authorized as aforesaid, in the same manner as if the same were a parish church; and every thing required by law to be done relative thereto by the churchwardens of any parish church shall be done by the chapelwarden or other officer exercising analogous duties in such chapel (f).

Book to be provided for the registration of banns, &c.

6. From time to time as there shall be occasion, the churchwardens and chapelwardens of churches and chapels wherein marriages are solemnized, shall provide a proper book of substantial paper, marked and ruled respectively in manner directed for the register book of marriages; and the banns shall be

(b) 4 Geo. 4, c. 17.

(c) Words in brackets repealed in 1873 (36 & 37 Vict. c. 91, Stat. Law Rev.).

(d) See 5 Geo. 4, c. 32 (*post*, p. 78); 11 Geo. 4 & 1 Will. 4, c. 18 (*post*, p. 80).

(e) See 20 Vict. c. 19, ss. 9, 10 (*post*, p. 114).

(f) As to registration, see 6 & 7 Will. 4, c. 86 (*post*, p. 90); 19 & 20 Vict. c. 119 (*post*, p. 104).

published from the said register book of banns by the officiating minister, and not from loose papers, and after publication shall be signed by the officiating minister, or by some person under his direction.

7. Provided always, that no parson, vicar, minister, or curate shall be obliged to publish the banns of matrimony between any persons whatsoever, unless the persons to be married shall, seven days at the least before the time required for the first publication of such banns respectively, deliver or cause to be delivered to such parson, vicar, minister, or curate, a notice in writing, dated on the day on which the same shall be so delivered, of their true Christian names and surnames, and of the house or houses of their respective abodes within such parish or chapelry as aforesaid, and of the time during which they have dwelt, inhabited, or lodged in such house or houses respectively.

8. Provided always, that no parson, minister, vicar, or curate, solemnizing marriages between persons both or one of whom shall be under the age of twenty-one years, after banns published, shall be punishable by ecclesiastical censures for solemnizing such marriages without consent of parents or guardians, unless such parson, minister, vicar, or curate shall have notice of the dissent of such parents or guardians; and in case such parents or guardians, or one of them, shall openly and publicly declare, or cause to be declared, in the church or chapel where the banns shall be so published, at the time of such publication, his, her, or their dissent to such marriage, such publication of banns shall be absolutely void.

9. Whenever a marriage shall not be had within three months after the complete publication of banns, no minister shall proceed to the solemnization of the same until the banns shall have been republished on three several Sundays, in the form and manner prescribed in this Act, unless by licence duly obtained according to the provisions of this Act.

10. No licence of marriage shall be granted by any archbishop, bishop, or other ordinary or person having authority to grant such licences, to solemnize any marriage in any other church or chapel than in the parish church or in some public chapel of or belonging to the parish or chapelry within which the usual place of abode of one of the persons to be married shall have been for the space of fifteen days immediately before the granting of such licence.

11. If any caveat be entered against the grant of any licence for a marriage, such caveat being duly signed by or on the behalf of the person who enters the same, together with his place of residence, and the ground of objection on which his caveat is founded, no licence shall issue till the said caveat, or a true copy thereof, be transmitted to the judge out of whose office the licence is to issue, and until the judge has certified to the register that he has examined into the matter of the caveat, and is satisfied that it ought not to obstruct the grant of the licence for the said marriage, or until the caveat be withdrawn by the party who entered the same.

12. Provided always that all parishes where there shall be no parish church or chapel belonging thereto, or none wherein divine service shall be usually solemnized every Sunday, and all extra-parochial places whatever, having no public chapel wherein banns may be lawfully published, shall be deemed and taken to belong to any parish or chapelry next adjoining, for the purposes of this Act only; and where banns shall be published in any church or chapel of any parish or chapelry adjoining to any such parish or chapelry where there shall be no church or chapel, or none wherein divine service shall be solemnized as aforesaid, or to any extra-parochial place as aforesaid, the parson, vicar, minister, or curate publishing such banns shall, in writing under his hand, certify the publication thereof in the same manner as if either of the persons to be married had dwelt in such adjoining parish or chapelry.

13. Provided always, that if the church of any parish, or chapel of any chapelry, wherein marriages have been usually solemnized, be demolished in order to be rebuilt, or be under repair, and on such account be disused for public service, it shall be lawful for the banns to be proclaimed in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, or in any place within the limits of the parish or chapelry which shall be licensed by the bishop of the diocese for the performance of divine service during the

Notice of the names and place and time of abode of parties to be given to minister seven days before publication of banns.

Ministers not punishable for marrying minors without consent of parents, &c. unless they have notice of dissent; if dissent publicly declared, publication of banns void.

Republishing of banns necessary if marriage not solemnized within three months.

Licences to be granted to marry in the church, &c. of such parish only wherein one of the parties resided for fifteen days before.

Where caveat entered no licence to issue till matter examined by judge.

Parishes, where no church or chapel, and extra-parochial places, deemed to belong to any adjoining parish, &c.

Where churches are demolished or under repair banns to be proclaimed in a church or

chapel of an adjoining parish, &c.

repair or rebuilding of the church as aforesaid; and where no such place shall be so licensed, then, during such period as aforesaid, the marriage may be solemnized in the adjoining church or chapel wherein the banns have been proclaimed; and all marriages heretofore solemnized in other places within the said parishes or chapelries than the said churches or chapels, on account of their being under repair, or taken down in order to be rebuilt, shall not be liable to have their validity questioned on that account, nor shall the ministers who have so solemnized the same be liable to any ecclesiastical censure, or to any other proceeding or penalty whatsoever (*g*).

Oath to be taken before the surrogate as to certain particulars before licence is granted.

14. For avoiding all fraud and collusion in obtaining of licences for marriage, before any such licence be granted, one of the parties shall personally swear before the surrogate or other person having authority to grant the same (*h*) that he or she believeth that there is no impediment of kindred or alliance, or of any other lawful cause, nor any suit commenced in any Ecclesiastical Court, to bar or hinder the proceeding of the said matrimony according to the tenor of the said licence; and that one of the said parties hath, for the space of fifteen days immediately preceding such licence, had his or her usual place of abode within the parish or chapelry within which such marriage is to be solemnized; and where either of the parties, not being a widower or widow, shall be under the age of twenty-one years, that the consent of the person or persons whose consent to such marriage is required under the provisions of this Act has been obtained thereto: provided always, that if there shall be no such person or persons having authority to give such consent, then upon oath made to that effect by the party requiring such licence, it shall be lawful to grant such licence notwithstanding the want of any such consent.

Bond not to be required before granting licence.

15. Provided always, that it shall not be required of any person applying for any such licence, to give any caution or security, by bond or otherwise, before such licence is granted; any thing in any Act or canon to the contrary thereof notwithstanding (*i*).

Who are to give consent if parties are under age.

16. The father, if living, of any party under twenty-one years of age, such parties not being a widower or widow; or if the father shall be dead, the guardian or guardians (*k*) of the person of the party so under age, lawfully appointed, or one of them; and in case there shall be no such guardian or guardians, then the mother of such party, if unmarried; and if there shall be no mother unmarried, then the guardian or guardians of the person appointed by the Court of Chancery, if any, or one of them, shall have authority to give consent to the marriage of such party; and such consent is hereby required for the marriage of such party so under age, unless there shall be no person authorized to give such consent (*l*).

If the father of minor be *non compos mentis*, or if guardians or mother of minor be *non compos mentis*, or beyond sea, &c., parties may apply to the Lord Chancellor.

17. In case the father or fathers of the parties to be married, or of one of them, so under age as aforesaid, shall be *non compos mentis*, or the guardian or guardians, mother or mothers, or any of them whose consent is made necessary as aforesaid to the marriage of such party or parties, shall be *non compos mentis*, or in parts beyond the seas, or shall unreasonably or from undue motives refuse or withhold his, her, or their consent to a proper marriage, then it shall and may be lawful for any person desirous of marrying, in any of the before-mentioned cases, to apply by petition to the Lord Chancellor, Lord Keeper, or the Lords Commissioners of the Great Seal of Great Britain for the time being, Master of the Rolls, or Vice-Chancellor of England, who is and are respectively hereby empowered to proceed upon such petition in a summary way; and in case the marriage proposed shall upon examination appear to be proper, the

(*g*) See 5 Geo. 4, c. 32, s. 1 (*post*, p. 78); 11 Geo. 4 & 1 Will. 4, c. 18 (*post*, p. 80).

(*h*) Power to administer the oath is given by 7 Will. 4 & 1 Vict. c. 22, s. 30 (*post*, p. 95). To take a false oath under this section is an indictable misdemeanour (*Reg. v. Chapman*, 18 L. J. M. C. 152).

(*i*) See Canons of 1603, Nos. 101—103 (*ante*, p. 69).

(*k*) See 49 & 50 Vict. c. 27 (*ante*, p. 9).

(*l*) See Canons of 1603, Nos. 62, 100 (*ante*, pp. 68, 69). Want of consent does not invalidate the marriage (*Rev. v. Birmingham*, 8 B. & C. 29).

said Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal for the time being, Master of the Rolls, or Vice-Chancellor, shall judicially declare the same to be so; and such judicial declaration shall be deemed and taken to be as good and effectual, to all intents and purposes, as if the father, guardian or guardians, or mother of the person so petitioning had consented to such marriage.

18. No surrogate hereafter to be deputed by any ecclesiastical judge who hath power to grant licences, shall grant any such licence until he hath taken an oath before the said judge, or before a commissioner appointed by commission under the seal of the said judge, which commission the said judge is hereby authorized to issue, faithfully to execute his office according to law, to the best of his knowledge, and hath given security by his bond in the sum of one hundred pounds to the bishop of the diocese for the due and faithful execution of his said office.

Surrogate to take oath of office.

19. Whenever a marriage shall not be had within three months after the grant of a licence by any archbishop, bishop, or any ordinary or person having authority to grant such licence, no minister shall proceed to the solemnization of such marriage until a new licence shall have been obtained, unless by banns duly published according to the provisions of this Act.

If marriages by licence be not solemnized within three months, new licence to be obtained.

20. Provided always, that nothing herein-before contained shall be construed to extend to deprive the Archbishop of Canterbury and his successors, and his and their proper officers, of the right which hath hitherto been used, in virtue of a certain statute made in the twenty-fifth year of the reign of the late King Henry the Eighth, intituled "An Act concerning Peter Pence and Dispensations"^(m) of granting special licences to marry at any convenient time or place.

Right of Archbishop of Canterbury to grant special licences.

21. If any person shall, . . . solemnize matrimony in any other place than a church or such public chapel wherein banns may be lawfully published, or at any other time than between the hours of eight and *twelve* in the forenoon⁽ⁿ⁾, unless by special licence from the Archbishop of Canterbury, or shall solemnize matrimony without due publication of banns, unless licence of marriage be first had and obtained from some person or persons having authority to grant the same; or if any person, falsely pretending to be in holy orders, shall solemnize matrimony according to the rites of the Church of England; every person knowingly and wilfully so offending, and being lawfully convicted thereof, shall be deemed and adjudged to be guilty of felony, and shall be transported for the space of fourteen years, according to the laws in force for transportation of felons: provided that all prosecutions for such felony shall be commenced within the space of three years after the offence committed^(o).

Persons solemnizing marriage in any other place than a church or chapel, or without banns or licence, or under pretence of being in holy orders, shall be transported.

Prosecution to be commenced within three years.

22. Provided always, and be it further enacted, that if any persons shall knowingly and wilfully intermarry in any other place than a church, or such public chapel wherein banns may be lawfully published, unless by special licence as aforesaid, or shall knowingly and wilfully intermarry without due publication of banns, or licence from a person or persons having authority to grant the same, first had and obtained, or shall knowingly and wilfully consent to or acquiesce in the solemnization of such marriage by any person not being in holy orders, the marriages of such persons shall be null and void to all intents and purposes whatsoever.

Marriage to be void where persons wilfully marry in any other place than a church, &c., or without banns or licence.

23. If any valid marriage solemnized by licence shall be procured by a party to such marriage to be solemnized between persons, one or both of whom shall be under the age of twenty-one years, not being a widower or widow, contrary to the provisions of this Act, by means of such party falsely swearing as to any matter or matters to which such party is herein-before required personally to swear, such party wilfully and knowingly so swearing; or if any valid marriage by banns shall be procured by a party thereto

When marriage solemnized between parties under age contrary to this Act, by false oath

^(m) 25 Hen. 8, c. 21 (*ante*, p. 61).

⁽ⁿ⁾ Now eight in the forenoon and three in the afternoon (49 & 50 Viet. c. 14, *post*, p. 119).

^(o) Cf. 6 & 7 Will. 4, c. 85, s. 39 (*post*, p. 88).

or fraud, the guilty party to forfeit all property accruing from the marriage.

to be solemnized by banns between persons, one or both of whom shall be under the age of twenty-one years, not being a widower or widow, such party knowing that such person as aforesaid under the age of twenty-one years had a parent or guardian then living, and that such marriage was had without the consent of such parent or guardian, and knowing that banns had not been duly published according to the provisions of this Act, and having knowingly caused or procured the undue publication of banns, then and in every such case it shall be lawful for his Majesty's Attorney-General (or for his Majesty's Solicitor-General in case of the vacancy of the office of Attorney-General) by information in the nature of an English Bill in the Court of Chancery or Court of Exchequer, at the relation of a parent or guardian of the minor, whose consent has not been given to such marriage, and who shall be responsible for any costs incurred in such suit, such parent or guardian previously making oath as is herein-after required, to sue for a forfeiture of all estate, right, title, and interest in any property which hath accrued or shall accrue to the party so offending by force of such marriage; and such Court shall have power in such suit to declare such forfeiture, and thereupon to order and direct that all such estate, right, title and interest in any property as shall then have accrued, or shall thereafter accrue to such offending party, by force of such marriage, shall be secured under the direction of such Court for the benefit of the innocent party, or of the issue of the marriage, or of any of them, in such manner as the said Court shall think fit, for the purpose of preventing the offending party from deriving any interest in real or personal estate, or pecuniary benefits from such marriage; and if both the parties so contracting marriage shall, in the judgment of the Court, be guilty of any such offence as aforesaid, it shall be lawful for the said Court to settle and secure such property, or any part thereof, immediately for the benefit of the issue of the marriage, subject to such provisions for the offending parties, by way of maintenance or otherwise, as the said Court, under the particular circumstances of the case, shall think reasonable, regard being had to the benefit of the issue of the marriage during the lives of their parents, and of the issue of the parties respectively by any future marriage, or of the parties themselves, in case either of them shall survive the other: Provided also, that no such information as aforesaid shall be filed, unless it shall be made out to the satisfaction of the Attorney or Solicitor-General before he files the same, by oath or oaths sworn before one of the masters in ordinary in Chancery, or before one of the barons of the Exchequer, and which they are hereby respectively empowered to administer, that the valid marriage to be complained of in such information hath been solemnized in such manner and under such circumstances, as in the judgment of the said Attorney or Solicitor-General are sufficient to authorize the filing the information under the provisions of this Act, and that such marriage has been solemnized without the consent of the party or parties at whose relation such information is proposed to be filed, or of any other parent or guardian of the minor married, to the knowledge or belief of the relator or relators so making oath; and that such relator or relators had not known or discovered that such marriage had been solemnized more than three months previous to his or their application to the Attorney or Solicitor-General (*p*).

Previous agreements to be void.

24. All agreements, settlements, and deeds, entered into or executed by the parties to any marriage, in consequence of or in relation to which marriage such information as aforesaid shall be filed, or by either of the said parties, before and in contemplation of such marriage, or after such marriage, for the benefit of the parties or either of them, or their issue, so far as the same shall be contrary to or inconsistent with the provisions of such security and settlement as shall be made by or under the direction of such Court as aforesaid, under the authority of this Act, shall be absolutely void, and have no force or effect.

Information to be filed

25. Provided always, that any original information to be filed for the purpose of obtaining a declaration of any such forfeiture as aforesaid, shall be filed

(*p*) Cf. 6 & 7 Will. 4, c. 85, s. 43 (*post*, p. 89); 55 & 56 Vict. c. 23, s. 14 (*post*, p. 122).

within one year after the solemnization of the marriage by which such forfeiture shall have been incurred, and shall be prosecuted with due diligence; and in case any person or necessary party to any such information shall abscond, or be or continue out of England, it shall be lawful for the Court in which such information shall be filed to order such person to appear to such information, and answer the same, within such time as to such Court shall seem fit; and to cause such order to be served on such person at any place out of England, or to cause such order to be inserted in the *London Gazette*, and such other British or foreign newspapers as to such Court shall seem proper; and in default of such person appearing and answering such information within the time to be limited as aforesaid, to order such information to be taken as confessed by such person, and to proceed to make such decree or order upon such information as such Court might have made if such person had appeared to and answered such information: Provided always, that in case the person at whose relation any such suit shall have been instituted shall die pending such suit, it shall be lawful for the Court of Chancery, if such Court shall see fit, to appoint a proper person or proper persons at whose relation such suit may be continued.

26. Provided always, that after the solemnization of any marriage under a publication of banns, it shall not be necessary in support of such marriage to give any proof of the actual dwelling of the parties in the respective parishes or chapelries wherein the banns of matrimony were published; or where the marriage is by licence, it shall not be necessary to give any proof that the usual place of abode of one of the parties, for the space of fifteen days as aforesaid, was in the parish or chapelry where the marriage was solemnized; nor shall any evidence in either of the said cases be received to prove the contrary in any suit touching the validity of such marriage

Proof of the actual residence of the parties not necessary to the validity of a marriage, whether after banns or by licence.

27. In no case whatsoever shall any suit or proceedings be had in any Ecclesiastical Court, in order to compel a celebration of any marriage *in facie ecclesiæ*, by reason of any contract of matrimony whatsoever, whether *per verba de presenti*, or *per verba de futuro*, any law or usage to the contrary notwithstanding (q).

No suit shall be had to compel celebration of marriage by reason of any contract of marriage.

28. And, in order to preserve the evidence of marriages, and to make the proof thereof more certain and easy, and for the direction of ministers in the celebration of marriages and registering thereof, be it enacted, that from and after the said first day of November all marriages shall be solemnized in the presence of two or more credible witnesses (r), besides the minister who shall celebrate the same.

Marriages to be in the presence of two witnesses, and to be registered (s).

[29. This section, which provided for punishment for making false entries, forgery, &c., was repealed in 1830 (11 Geo. 4 & 1 Will. 4, c. 66, s. 31).]

30. Provided always, that this Act, or any thing therein contained, shall not extend to the marriages of any of the royal family (t).

This Act not to affect marriages of Royal Family.

31. Provided likewise, that nothing in this Act contained shall extend to any marriages amongst the people called Quakers, or amongst the persons professing the Jewish religion, where both the parties to any such marriage shall be of the people called Quakers, or persons professing the Jewish religion respectively (u).

Act not to extend to marriages of Quakers and Jews.

32. Two printed copies of this Act shall, as soon as conveniently may be after the passing of this Act, be provided by his Majesty's printer, and transmitted to the officiating ministers of the several parishes and chapelries in England respectively; one of which copies shall be deposited and kept with the book

Two printed copies of the Act to be sent to the ministers of the several parishes, &c., of

(q) See 2 & 3 Edw. 6, c. 23 (*ante*, p. 65); Canons of 1603, No. 102 (*ante*, p. 69); *Beachey v. Brown*, E. B. & E. 796.

(r) This is directory only (*Wing v. Taylor*, 30 L. J. P. & M. 258).

(s) The rest of the section dealing with registration was repealed by 6 & 7 Will. 4, c. 86, s. 1 (*post*, p. 90).

(t) *Vide ante*, p. 70.

(u) See *post*, 6 & 7 Will. 4, c. 85, s. 16 (*post*, p. 84); 23 & 24 Vict. c. 18 (*post*, p. 115); and 35 & 36 Vict. c. 10 (*post*, p. 117).

which one to
be kept in the
parish chest.

Act only to
extend to
England.

containing the marriage register of such parish or chapelry, in the chest or box provided for the custody of the same.

33. This Act shall extend only to that part of the United Kingdom called England.

THE MARRIAGE ACT, 1824.

5 GEO. 4, c. 32.

An Act to amend an Act passed in the last Session of Parliament, intituled "An Act for amending the Laws respecting the Solemnization of Marriages in England."
[17th May, 1824.]

[Whereas by the Marriage Act, 1823 (*v*), it is provided, that if the church of any parish, or chapel of any chapelry, wherein marriages have been usually solemnized, be demolished in order to be rebuilt, or be under repair (*x*), and on such account be disused for public service, it shall be lawful for the banns to be proclaimed in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, or in any place within the limits of the parish or chapelry which shall be licensed by the bishop of the diocese for the performance of divine service during the repair or rebuilding of the church as aforesaid; but it is not provided that marriages may be solemnized in such place so licensed: And whereas it is farther provided, that where no such place shall be so licensed, then during such period as aforesaid the marriage may be solemnized in the adjoining church or chapel wherein the banns have been proclaimed; but it is not provided that marriages may be solemnized by licence in such adjoining church or chapel as aforesaid: And whereas it is provided that all marriages theretofore, but it is not provided that marriages thereafter solemnized in other places within the said parishes or chapelries than the said churches or chapel, on account of their being under repair, or taken down in order to be rebuilt, shall not be liable to have their validity questioned on that account: And whereas it is provided, that the ministers who have so solemnized the same shall not be liable to any ecclesiastical censure, or to any other proceeding or penalty whatsoever; but it is not provided that the ministers who shall thereafter solemnize such marriages shall not be liable to such censure or other proceeding or penalty: And whereas it is expedient that marriages heretofore and hereafter solemnized in such place so licensed as aforesaid, during the repair or rebuilding of any church or chapel, or if no such place shall be so licensed, then in a church or chapel of some adjoining parish or chapelry, whether by banns lawfully proclaimed, or by licence lawfully granted, should not have their validity questioned on account of their being so solemnized: And whereas it is expedient that the ministers who shall have so solemnized the same should not be liable to any ecclesiastical censure, or to any other proceeding whatsoever:] Therefore be it enacted, and it is hereby enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act, all marriages which have been heretofore solemnized or which shall be hereafter solemnized in any place within the limits of such parish or chapelry so licensed as aforesaid for the performance of divine service during the repair or rebuilding of the church of any parish, or chapel of any chapelry, wherein marriages have been usually solemnized, or if no such place shall be so licensed, then in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, whether by banns lawfully published in such church or chapel, or by licence lawfully granted, shall not have their validity questioned on account of their having been so solemnized; nor shall the ministers who have so solemnized the same be liable to any ecclesiastical censure, or to any other proceeding whatsoever.

Validity of
marriages
solemnized in
certain places
where
churches or
chapels are
under repair,
&c., not to be
questioned.

(*v*) 4 Geo. 4, c. 76 (*ante*, p. 71).

(*x*) Sect. 13 (*ante*, p. 73).

2. All licences granted by any archbishop, bishop, or other ordinary or person having authority to grant such licences for the solemnization of marriages in the church of any parish or chapel of any chapelry wherein marriages have been usually solemnized, shall be deemed and taken to be licences for the solemnization of marriages in any place within the limits of such parish or chapelry which shall be licensed by the bishop of the diocese for the performance of divine service during the repair or rebuilding of any such church or chapel, or if no such place shall be so licensed, then in the church or chapel of any adjoining parish or chapelry wherein marriages have been usually solemnized.

3. All banns of marriage proclaimed, and all marriages solemnized according to the provisions of this Act, in any place licensed as aforesaid, within the limits of any parish or chapelry, during the repair or rebuilding of the church or chapel of such parish or chapelry, shall be considered as proclaimed and solemnized in the church or chapel of such parish or chapelry, and shall be so registered accordingly.

Licences for solemnization of marriages in churches, &c. deemed to extend to any place within the limits of the parish, licensed for the performance of divine service while church is under repair, &c.

Banns proclaimed and marriages solemnized in such licensed places, shall be considered as done in the church of the parish.

THE MARRIAGE CONFIRMATION ACT, 1825.

6 GEO. 4, c. 92.

An Act to render valid Marriages solemnized in certain Churches and Public Chapels in which Banns have not usually been published. [5th July, 1825.]

Whereas since the making of an Act passed in the twenty-sixth year of the reign of his late Majesty King George the Second, intituled “An Act for the better preventing Clandestine Marriages” (*y*), and since the making of an Act passed in the forty-fourth year of the reign of his late Majesty King George the Third, intituled “An Act to render valid certain Marriages solemnized in certain Churches and Public Chapels in which Banns had not usually been published, before or at the time of passing an Act made in the twenty-sixth year of the reign of his late Majesty King George the Second, intituled ‘An Act for better preventing Clandestine Marriages’” (*z*), divers churches and chapels have been erected and built within that part of Great Britain called England, Wales, and the town of Berwick-upon-Tweed, which have been duly consecrated, and divers marriages have been solemnized therein since the passing of the said last-mentioned Act; but by reason that in such churches and chapels banns of matrimony had not usually been published before or at the time of passing the said first-mentioned Act, nor any authority obtained for solemnizing marriages therein under the provisions of the Marriage Act, 1823 (*a*), such marriages have been or may be deemed to be void: May it therefore please your Majesty that it may be enacted; and be it enacted by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all marriages already solemnized in any church or public chapel in that part of Great Britain called England and Wales, and the town of Berwick-upon-Tweed, erected since the making of the said Act of the twenty-sixth year of the reign of his said late Majesty King George the Second, and consecrated, shall be as good and valid in law as if such marriages had been solemnized in parish churches or public chapels having chapelries annexed, and wherein banns had usually been published, before or at the time of passing the said first-mentioned Act.

2. It shall and may be lawful for marriages to be in future solemnized in all churches and chapels erected since the passing of the said Act in the twenty-sixth year of the reign of his late Majesty King George the Second, and consecrated, in which churches and chapels it has been customary and usual before the

Marriages which have been solemnized in churches and chapels erected since the recited Act 26 Geo. 2, c. 33, shall be good in law as if solemnized in parish churches, &c.

Marriages in future solemnized in such churches, &c. shall be valid.

(*y*) 26 Geo. 2, c. 33 (Lord Hardwicke’s Act), repealed by sect. 1 of the Marriage Act, 1823 (*ante*, p. 71).

(*z*) 44 Geo. 3, c. 77, a marriage confirmation Act,

(*a*) 4 Geo. 4, c. 76 (*ante*, p. 71).

passing of this Act to solemnize marriages; and all marriages herein-after solemnized therein shall be as good and valid in law as if such marriages had been solemnized in parish churches or public chapels having chapelries annexed, and wherein banns had usually been published before or at the time of passing the said Act.

Registers of such marriages evidence.

3. The registers of marriages solemnized, or to be solemnized, in the said churches or chapels, which are hereby enacted to be valid in law, or copies thereof, shall be received in all Courts of law and equity as evidence of such marriages, in the same manner as the registers of marriages solemnized in parish churches or public chapels in which banns were usually published before or at the time of passing the said Act of the twenty-sixth year of the reign of his said late Majesty King George the Second, or copies thereof, are received in evidence: Provided nevertheless, that in all such Courts the same objections shall be available to the receiving such registers or copies as evidence, as would have been available to receiving the same as evidence if such registers or copies had related to marriages solemnized in such last-mentioned parish churches or public chapels as aforesaid.

Registers of marriages solemnized in chapels where banns had not been usually published before the Act 26 Geo. 2, c. 33, to be removed to the parish church.

4. The registers of all marriages solemnized in any such public chapel where banns had not been usually published before or at the time of passing the said Act of the twenty-sixth year of the reign of his said late Majesty King George the Second, which marriages are hereby enacted to be valid in law, shall, within three months after the passing of this Act, be removed to the parish church of the parish in which such chapel shall be situated; and in case such chapel shall be situated in an extra-parochial place, then to the parish church next adjoining to such extra-parochial place, to be kept with the marriage registers of such parish, and in like manner as parish registers are directed to be kept by the said Act of the twenty-sixth year of the reign of his said late Majesty King George the Second.

THE MARRIAGE CONFIRMATION ACT, 1830.

11 GEO. 4 & 1 WILL. 4, c. 18.

An Act to render valid Marriages solemnized in certain Churches and Chapels.

[29th May, 1830.]

During the time that any church, &c. is under repair, the bishop may direct banns to be published and marriages solemnized in any consecrated chapel of the parish.

(b) 2. In every case in which the church of any parish or place, in which banns of marriage may be published and marriages solemnized, shall be pulled down, or be rebuilding or under repair, it shall be lawful for the bishop of the diocese to order and direct that banns of marriage may be published and marriages solemnized in any consecrated chapel of such parish or place which he shall by order in writing direct, until the church shall again be opened for the performance of divine service; and during all such period the said consecrated chapel shall, for all purposes relating to the publication of banns of marriage and to the solemnization of marriages, be deemed and taken to be the church of the parish, any thing in any Act or Acts to the contrary notwithstanding; and the fees in respect thereof shall be applied, during such period, as the bishop of the diocese shall, with the consent of the incumbent, order and direct.

For removing doubts as to marriages solemnized or to be solemnized in churches made and constituted the churches of distinct or district parishes under Acts 58 Geo. 3, c. 45, and 59 Geo. 3, c. 134.

3. And whereas doubts have arisen touching the validity of marriages solemnized in churches which have been made and constituted the churches of distinct parishes, or district parishes, under the provisions of the Church Building Act, 1818 (*bb*), and also of the Church Building Act, 1819 (*c*): And whereas it is expedient that such doubts should be removed: Therefore be it enacted, that all marriages which have already been solemnized, or may hereafter be solemnized, in any church which shall have been made and constituted the church of a distinct parish, or of a district parish, as aforesaid, after consecration thereof and assignment of a district thereto, shall be as good and valid

(b) Sects. 1, 4, 5, are local and personal.

(bb) 58 Geo. 3, c. 45.

(c) 59 Geo. 3, c. 134.

in law as if such marriages had been solemnized in any parish church wherein banns had been usually published before or at the time of passing an Act made in the twenty-sixth year of King George the Second, intituled "An Act for the better preventing of Clandestine Marriages" (*cc*).

THE MARRIAGE ACT, 1835.

(*d*) 5 & 6 WILL. 4, c. 54.

An Act to render certain Marriages valid, and to alter the Law with respect to certain voidable Marriages. [31st August, 1835.]

Whereas marriages between persons within the prohibited degrees are voidable only by sentence of the Ecclesiastical Court pronounced during the lifetime of both the parties thereto, and it is unreasonable that the state and condition of the children of marriages between persons within the prohibited degrees of affinity should remain unsettled during so long a period, and it is fitting that all marriages which may hereafter be celebrated between persons within the prohibited degrees of consanguinity or affinity should be *ipso facto* void, and not merely voidable: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all marriages which shall have been celebrated before the passing of this Act between persons being within the prohibited degrees of affinity shall not hereafter be annulled for that cause by any sentence of the Ecclesiastical Court, unless pronounced in a suit which shall be depending at the time of the passing of this Act: Provided that nothing hereinbefore enacted shall affect marriages between persons being within the prohibited degrees of consanguinity (*dd*).

Marriages before the passing of this Act of persons within the prohibited degrees not to be annulled.

2. All marriages which shall hereafter be celebrated between persons within the prohibited degrees of consanguinity or affinity shall be absolutely null and void to all intents and purposes whatsoever (*e*).

Marriages of persons within prohibited degrees hereafter to be absolutely void.

3. Provided always that nothing in this Act shall be construed to extend to that part of the United Kingdom called Scotland.

Extent.

THE MARRIAGE ACT, 1836 (*f*).

6 & 7 WILL. 4, c. 85.

An Act for Marriages in England.

[17th August, 1836.]

[Whereas it is expedient to amend the law of marriages in England: be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that after the first day of March in the year one thousand eight hundred and thirty-seven,]

1. Notwithstanding anything in this Act contained, all the rules prescribed by the rubrick, concerning the solemnizing of marriages shall continue to be duly observed by every person in holy orders of the Church of England who shall solemnize any marriage in England: provided always, that where by any law or canon in force before the passing of this Act it is provided that any marriage may be solemnized after publication of banns, such marriage may be

After 1st of March, 1837, all rules prescribed by the rubrick to continue to be observed.

(*cc*) 26 Geo. 2, c. 33 (Lord Hardwicke's Act), repealed by 4 Geo. 4, c. 76, s. 1 (*ante*, p. 71).

(*d*) Lord Lyndhurst's Act.

(*dd*) See the table (*ante*, p. 14).

(*e*) Marriage between a man and his *deceased* wife's sister is excepted from this section by 7 Edw. 7, c. 47, s. 1 (*ante*, p. 15, and *post*, p. 162); *R. v. Dibdin*, (1910) P. 57. As to the contracting of such marriages by clergymen of the Church of England, see sect. 4.

(*f*) This Act took effect on June 30th, 1837.

Marriages may be solemnized on production of registrar's certificate.

Marriages of Quakers and Jews.

Superintendent registrar of births to be superintendent registrar of marriages.

Notice of every intended marriage to be given to the superintendent registrar of the district.

Superintendent registrar to keep notices in a book.

solemnized in like manner on production of the registrar's (*g*) certificate as herein-after provided (*h*); provided also, that nothing in this Act contained shall affect the right of the Archbishop of Canterbury (*i*) and his successors, and his and their proper officers, to grant special licences to marry at any convenient time and place, or the right of any surrogate or other person now having authority to grant licences for marriages (*j*).

2. That the Society of Friends commonly called Quakers, and also persons professing the Jewish religion, may continue to contract and solemnize marriage according to the usages of the said society and of the said persons respectively; and every such marriage is hereby declared and confirmed good in law, provided that the parties to such marriage be both of the said society, or both persons professing the Jewish religion respectively, provided also, that notice to the registrar shall have been given, and the registrar's (*k*) certificate shall have issued in manner herein-after provided (*l*).

3. The superintendent registrar of births and deaths of every union, parish, or place shall be, in right of his office, superintendent registrar of marriages within such union, parish, or place, and that such union, parish, or place shall be deemed the district of such superintendent registrar of marriages.

4. In every case of marriage intended to be solemnized in England after the said first day of March according to the rites of the Church of England, (unless by licence or by special licence, or after publication of banns,) and in every case of marriage intended to be solemnized in England after the said first day of March according to the usages of the Quakers or Jews, or according to any form authorized by this Act, one of the parties shall give notice under his or her hand . . . (*m*), to the superintendent registrar of the district within which the parties shall have dwelt for not less than seven days then next preceding, or if the parties dwell in the districts of different superintendent registrars shall give the like notice to the superintendent registrar of each district and shall state therein the name and surname and the profession or condition of each of the parties intending marriage, the dwelling place of each of them, and the time not being less than seven days during which each has dwelt therein, and the church or other building in which the marriage is to be solemnized; provided that if either party shall have dwelt in the place stated in the notice during more than one calendar month, it may be stated therein that he or she hath dwelt there one month and upwards (*n*).

5. The superintendent registrar shall file all such notices, and keep them with the records of his office, and shall also forthwith enter a true copy of all such notices fairly into a book, to be for that purpose furnished to him by the Registrar-General, to be called "The Marriage Notice Book," . . . (*o*); and the marriage notice book shall be open at all reasonable times without fee to all persons desirous of inspecting the same; and for every such entry the superintendent registrar shall be entitled to have a fee of one shilling (*p*).

6 (*q*). [*Notices to be read at meetings of guardians.*]

7. [*After seven days, or twenty-one days, certificate of notice to be given upon demand* (*r*).]

(*g*) "Superintendent registrar" (7 Will. 4 & 1 Vict. c. 22, s. 1, *post*, p. 94).

(*h*) See 7 Will. 4 & 1 Vict. c. 22, s. 36 (*post*, p. 96).

(*i*) See *ante*, pp. 22, 61.

(*j*) See *ante*, p. 22.

(*k*) *I.e.*, "superintendent registrar."

(*l*) Amended by 23 & 24 Vict. c. 18, s. 1 (*post*, p. 115), and 35 & 36 Vict. c. 10 (*post*, p. 117).

(*m*) Words here omitted repealed by 37 & 38 Vict. c. 35. As to Quakers, and as to both Quakers and Jews, by 19 & 20 Vict. c. 119, s. 21 (*post*, p. 110).

(*n*) See 19 & 20 Vict. c. 119, ss. 2, 6 (*post*, pp. 105, 106).

(*o*) Words here omitted repealed by 21 & 22 Vict. c. 25, s. 6.

(*p*) See 19 & 20 Vict. c. 119, ss. 3—5 (*post*, pp. 105, 106).

(*q*) This section was virtually repealed by 19 & 20 Vict. c. 119, s. 1, and formally repealed by 37 & 38 Vict. c. 35.

(*r*) Repealed by 37 & 38 Vict. c. 35.

8. The Registrar-General shall furnish to every superintendent registrar a sufficient number of forms of certificates . . . (s); and in order to distinguish the certificates to be issued for marriages by licence from the certificates to be issued for marriages without licence, a water-mark in the form of the word "licence," in Roman letters, shall be laid and manufactured in the substance of the paper on which the certificates to be issued for marriage by licence shall be written or printed; and every certificate to be issued for marriage by licence shall be printed with red ink, and every certificate to be issued for marriage without licence shall be printed with black ink, and such other distinctive marks between the two kinds of certificate shall be used from time to time as shall seem fit to the Registrar-General.

Forms of certificates to be furnished.
Certificates for marriage by licence to be distinguishable from other certificates.

9. Any person authorized in that behalf may forbid the issue of the superintendent registrar's certificate by writing at any time before the issue of such certificate the word "forbidden" opposite to the entry of the notice of such intended marriage in the marriage notice book, and by subscribing thereto his or her name and place of abode, and his or her character, in respect of either of the parties, by reason of which he or she is so authorized; and in case the issue of any such certificate shall have been so forbidden the notice and all proceedings thereupon shall be utterly void (t).

Issue of superintendent registrar's certificate may be forbidden.

10. The like consent shall be required to any marriage in England solemnized by licence as would have been required by law to marriages solemnized by licence immediately before the passing of this Act; and every person whose consent to a marriage by licence is required by law is hereby authorized to forbid the issue of the superintendent registrar's certificate, whether the marriage is intended to be by licence or without licence (u).

Consent.

11. Every superintendent registrar shall have authority to grant licences for marriage in any building registered as hereinafter provided within any district under his superintendence, or in his office . . . (v), and every superintendent registrar shall four times in every year, on such days as shall be appointed by the Registrar-General, make a return to the Registrar-General of every licence granted by him since his last return, and of the particulars stated concerning the parties: Provided always, that no superintendent registrar shall grant any such licence until he shall have given security by his bond in the sum of one hundred pounds to the Registrar-General for the due and faithful execution of his office: Provided also, that nothing herein contained shall authorize any superintendent registrar to grant any licence for marriage in any church or chapel in which marriages may be solemnized according to the rites of the Church of England, or in any church or chapel belonging to the Church of England, or licensed for the celebration of divine worship according to the rites and ceremonies of the Church of England, or any licence for marriage in any registered building which shall not be within his district (x).

Superintendent registrar may grant licences for marriage.

Superintendent registrar to give security.

Proviso.

12. [*Certificate to be given before the licence is granted (y).*]

13. Any person, on payment of five shillings, may enter a caveat with the superintendent registrar against the grant of a certificate or a licence for the marriage of any person named therein; and if any caveat be entered with the superintendent registrar, such caveat being duly signed by or on behalf of the person who enters the same, together with his or her place of residence, and the ground of objection on which his or her caveat is founded, no certificate or licence shall issue or be granted until the superintendent registrar shall have examined into the matter of the caveat, and is satisfied that it ought not to obstruct the grant of the certificate or licence for the said marriage, or until the caveat be withdrawn by the party who entered the same; provided that in cases of doubt it shall be lawful for the superintendent registrar to refer the matter of any such caveat to the Registrar-General, who shall decide upon the same: Provided likewise, that in case of the superintendent registrar refusing

Caveat may be lodged with superintendent registrar against grant of licence or certificate.

(s) Words here omitted repealed by 21 & 22 Vict. c. 25, s. 6.

(t) See sect. 37 (*post*, p. 88).

(u) See 19 & 20 Vict. c. 119, ss. 17, 18 (*post*, pp. 109, 110).

(v) Words here omitted repealed by 37 & 38 Vict. c. 35.

(x) See 19 & 20 Vict. c. 119, ss. 9, 10, 11 (*post*, pp. 107, 108).

(y) This section was repealed by 37 & 38 Vict. c. 35.

the grant of the certificate or licence, the person applying for the same shall have a right to appeal to the Registrar-General, who shall thereupon either confirm the refusal or direct the grant of the certificate or licence.

Marriages not to be solemnized until after twenty-one days after entry of notice, unless by licence.

New notice required after three months.

Superintendent registrar's certificate or licence to be delivered to the person by or before whom the marriage is solemnized.

Superintendent registrar may appoint registrars of marriages.

Places of worship may be registered for solemnizing marriages therein.

14. No marriage after such notice as aforesaid, unless by virtue of a licence to be granted by the superintendent registrar, shall be solemnized or registered in England until after the expiration of twenty-one days after the day of the entry of such notice as aforesaid . . . (z).

15. Whenever a marriage shall not be had within three calendar months after the notice shall have been so entered by the superintendent registrar, the notice and certificate, and any licence which may have been granted thereupon, and all other proceedings thereupon, shall be utterly void; and no person shall proceed to solemnize the marriage, nor shall any registrar register the same, until new notice shall have been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid (a).

16. The superintendent's certificate, or, in case the parties shall have given notice to the superintendent of different districts, the certificate of each superintendent, shall be delivered to the officiating minister, if the marriage shall be solemnized according to the rites of the Church of England; and the said certificate or licence shall be delivered to the registering officer of the people called Quakers for the place where the marriage is solemnized, if the same shall be solemnized according to the usages of the said people; or to the officer of a synagogue by whom the marriage is registered, if the same shall be solemnized according to the usages of persons professing the Jewish religion; and in all other cases shall be delivered to the registrar present at the marriage, as hereinafter provided (b).

17. It shall be lawful for the superintendent registrar of any union, parish, or place . . . (c), to appoint by writing under his hand such person or persons as he may think fit (d), with such qualifications as the Registrar-General, by any general rule, may declare to be necessary, to be a registrar or registrars for the purpose of being present at marriages to be solemnized by virtue of this Act at which the presence of a registrar is made necessary, and every such registrar of marriages shall hold his office during the pleasure of the superintendent registrar by whom he was appointed, or of the Registrar-General (e).

18. Any proprietor or trustee of a separate building, certified (f) according to law as a place of religious worship, may apply to the superintendent registrar of the district, in order that such building may be registered for solemnizing marriages therein, and in such case shall deliver to the superintendent registrar a certificate, signed in duplicate by twenty householders at the least, that such building has been used by them during one year at the least as their usual place of public religious worship, and that they are desirous that such place should be registered as aforesaid, each of which certificates shall be countersigned by the proprietor or trustee by whom the same shall be delivered; and the superintendent registrar shall send both certificates to the Registrar-General, who shall register such building accordingly in a book to be kept for that purpose at the General Register Office; and the Registrar-General shall indorse on both certificates the date of the registry, and shall keep one certificate with the other records of the General Register Office, and shall return the other certificate to the superintendent registrar, who shall keep the same with the other records of his office; and the superintendent registrar shall enter the date of the registry of such building in a book to be furnished to him for that purpose by the Registrar-General, and shall give a certificate of such registry under

(z) Words here omitted repealed by 37 & 38 Vict. c. 35.

(a) See 7 Will. 4 & 1 Vict. c. 22, s. 3 (*post*, p. 94).

(b) As to delivery of certificate in case of marriages under 61 & 62 Vict. c. 58, see sect. 7 (1) of that Act (*post*, p. 134).

(c) Words here omitted repealed by 37 & 38 Vict. c. 35.

(d) Subject to 7 Will. 4 & 1 Vict. c. 22, s. 22 (*post*, p. 94).

(e) See 7 Will. 4 & 1 Vict. c. 22, s. 35 (*post*, p. 96), and 19 & 20 Vict. c. 119, ss. 15, 16 (*post*, p. 109).

(f) See *post*, pp. 101, 136.

his hand, on parchment or vellum, to the proprietor or trustee by whom the certificates are countersigned, and shall give public notice of the registry thereof by advertisement in some newspaper circulating within the county, and in the *London Gazette*; and for every such entry, certificate, and publication the superintendent registrar shall receive at the time of the delivery to him of the certificates the sum of three pounds.

19. If at any time subsequent to the registry of any building for solemnizing marriages therein it shall be made to appear to the satisfaction of the Registrar-General that such building has been disused for the public religious worship of the congregation on whose behalf it was registered as aforesaid, the Registrar-General shall cause the registry thereof to be cancelled; provided that if it shall be proved to the satisfaction of the Registrar-General that the same congregation use instead thereof some other such building for the purpose of public religious worship, the Registrar-General may substitute and register such new place of worship instead of the disused building, although such new place of worship may not have been used for that purpose during one year then next preceding; and every application for cancelling the registry of any such building, or for such substitution and registry of a substituted building, shall be made to the Registrar-General by or through the superintendent registrar of the district; and such cancel or substitution, when made, shall be made known by the Registrar-General to the superintendent registrar, who shall enter the fact and the date thereof in the book provided for the registry of such buildings, and shall certify and publish such cancel or substitution and registry in manner hereinbefore provided in the case of the original registry of the disused building; and for every such substitution the superintendent registrar shall receive, at the time of the delivery of the certificate from the party requiring the substitution, the sum of three pounds; and after such cancel or substitution shall have been made by the Registrar-General it shall not be lawful to solemnize any marriage in such disused building, unless the same shall be again registered in the manner hereinbefore provided.

On removal of the same congregation the new place of worship may be immediately registered, instead of the one disused.

20. After the expiration of the said period of twenty-one days, or of *seven days* (g) if the marriage is by licence, marriages may be solemnized in the registered building stated as aforesaid in the notice of such marriage, between and by the parties described in the notice and certificate, according to such form and ceremony as they may see fit to adopt: Provided nevertheless, that every such marriage shall be solemnized with open doors, between the hours of *eight and twelve in the forenoon* (h), in the presence of some registrar of the district in which such registered building is situate, and of two or more credible witnesses; provided also, that in some part of the ceremony, and in the presence of such registrar (i) and witnesses, each of the parties shall declare,

Marriages may be solemnized in such registered places, in the presence of some registrar and of two witnesses.

“ I do solemnly declare, that I know not of any lawful impediment why

I A. B. may not be joined in matrimony to C. D.”

And each of the parties shall say to the other,

“ I call upon these persons here present to witness that I A. B. do take thee C. D. to be my lawful wedded wife [or husband].”

Provided also, that there be no lawful impediment to the marriage of such parties.

21. Any persons who shall object to marry under the provisions of this Act in any such registered building may, after due notice and certificate issued as aforesaid, contract and solemnize marriage at the office and in the presence of the superintendent registrar and some registrar of the district, and in the presence of two witnesses, with open doors, and between the hours aforesaid, making the declaration and using the form of words hereinbefore provided in the case of marriage in any such registered building.

Marriages may be celebrated before the superintendent registrar.

(g) This limitation was removed and “ one whole day ” substituted by 19 & 20 Vict. c. 119, s. 9 (*post*, p. 107).

(h) Now between “ the hours of eight in the forenoon and three in the afternoon ” (49 & 50 Vict. c. 14, s. 1, *post*, p. 119).

(i) His presence is not obligatory in the case of marriages under 61 & 62 Vict. c. 58 (see sect. 4 of that Act, *post*, p. 133).

Marriage fees to the registrar.

Registrar to register all marriages solemnized before him in books to be sent by the Registrar-General.

Copies of the marriage register book to be given quarterly to the superintendent registrar.

Bishops, with consent of patrons, may licence chapels for the solemnization of marriages in populous places.

22. The registrar shall be entitled for every marriage which shall be solemnized under this Act in his presence to have from the parties married, the sum of ten shillings, if the marriage shall be by licence, and otherwise the sum of five shillings.

23. The registrar shall forthwith register every marriage solemnized in manner aforesaid in his presence in a marriage register book to be furnished to him for that purpose from time to time by the Registrar-General, according to the form provided for the registration of marriages by an Act made in this present session of Parliament, intituled "An Act for registering Births, Deaths and Marriages in England" (*k*), . . . (*l*) and every entry of such marriage shall be signed by the person by or before whom the marriage shall have been solemnized, if there shall be any such person, and by the registrar, and also by the parties married, and attested by two witnesses; and every such entry shall be made in order from the beginning to the end of the book.

24. In every year, on such days as shall from time to time be appointed by the Registrar-General, within one calendar month next after the first day of April, the first day of July, the first day of October, and the first day of January respectively, every registrar shall make and deliver to the superintendent registrar of his district a true copy, certified by him under his hand, according to the form of Schedule (D.) to this Act annexed, of all the entries of marriage in the register book kept by him since the last delivery, and the superintendent registrar shall verify the same, and if found to be correct shall certify the same under his hand to be a true copy; and if there shall have been no marriage registered since the delivery of the last certified copy, the registrar shall certify the fact, and such certificate shall be delivered to the superintendent registrar as aforesaid, and countersigned by him; and the registrar shall keep safely the said register book until it shall be filled, and shall then deliver it to the superintendent registrar to be kept by him with the records of his office.

25. [*Proof of residence of parties, or consent, not necessary to establish the marriage (n).*]

26. And whereas it is expedient that provision should be made, under proper restrictions, for relieving the inhabitants of populous districts remote from the parish church, or from any chapel wherein marriages may be lawfully celebrated according to the rites and ceremonies of the Church of England, from the inconvenience to which they may be thereby subjected in the solemnization of their marriages; be it therefore enacted, that, with the consent under the hand and seal of the patron and incumbent respectively of the church of the parish or district in which may be situated any public chapel with or without a chapelry thereunto annexed, or any chapel duly licensed for the celebration of divine service according to the rites and ceremonies of the Church of England, or any chapel the minister whereof is duly licensed to officiate therein according to the rites and ceremonies of the Church of England, or without such consent after two calendar months notice in writing given by the registrar of the diocese to such patron and incumbent respectively, the bishop of the diocese may, if he shall think it necessary for the due accommodation and convenience of the inhabitants, authorize by a licence under his hand and seal the solemnization of marriages in any such chapel for persons residing within a district the limits whereof shall be specified in the bishop's licence, and under such provisions as to the amount, appropriation, or apportionment of the dues, and as to other particulars, as to the said bishop may seem fit, and as may be specified in the said licence; provided that it shall be lawful for any patron or incumbent who shall refuse or withhold consent to the grant of any such licence to deliver to the bishop, under his or her hand and seal, a statement of the reasons for which such consent shall have been so refused or withheld; and no such licence shall be granted by any bishop until he shall have inquired into the matter of

(*k*) 6 & 7 Will. 4, c. 86 (*post*, p. 90).

(*l*) Words here omitted were repealed by 21 & 22 Vict. c. 25, s. 6.

(*n*) Repealed by 37 & 38 Vict. c. 35.

such reasons; and every instrument of consent of the patron and incumbent, or, if such consent be refused or withholden, a copy of the notice under the hand of the registrar, and every statement of reasons alleged as aforesaid by the patron or incumbent, with the bishop's adjudication thereupon under his hand and seal, shall be registered in the registry of the diocese; and thenceforth and until the said licence be revoked marriages solemnized in such chapel shall be as valid to all intents and purposes as if the same had been solemnized in the parish church, or in any chapel where marriages might heretofore have been legally solemnized (*n*).

27. All fees, dues, and other emoluments on account of the solemnization of marriages which belong to the incumbent or clerk respectively of any church or chapel in any parish or district within which the solemnization of marriages shall be authorized as aforesaid shall respectively be received, until the avoidance of such church or chapel next after the passing of this Act, for and on account of such incumbent, and, until the vacancy in the office of clerk next after the passing of this Act, for and on account of such clerk, and be paid over to them, except such portion of the fees, dues, or other emoluments as the said bishop of the diocese, with the consent of the said incumbent and clerk respectively, shall in such aforesaid licence assign to the minister and clerk respectively of the chapel in which the solemnization of marriages shall be authorized as aforesaid; and that it shall be lawful for the said bishop in and by such licence, without any such consent, to declare that from and after such next avoidance or vacancy respectively the whole or such part of the fees, dues, and other emoluments on account of the solemnization of marriages in such last-mentioned chapel as shall be specified in such licence, shall be receivable, and the same shall thenceforth be received by or for the minister and clerk of such chapel respectively.

Appropriation of fees on marriages performed in such chapels.

28. When the said bishop shall authorize the solemnization of marriages in any such chapel as aforesaid without the consent under the hand and seal of the patron and incumbent respectively, it shall be lawful for them or either of them to appeal within one calendar month to the archbishop of the province, who shall hear the same in a summary manner, and shall make such order confirming, revoking, or varying the licence so given, as to him shall seem meet and expedient, which order shall be registered in the registry of the diocese, and shall be conclusive and binding on all parties whatsoever.

Patron or incumbent may appeal to the Archbishop against such licences.

29. [*Notice of such licences to be affixed in chapels (o).*]

30. And be it enacted, that all provisions which shall from time to time be in force relative to marriages, and to providing, keeping, and transmitting register books and copies of registers of marriages solemnized in any parish church, shall extend to any chapel in which the solemnization of marriages shall be authorized as aforesaid, in the same manner as if the same were a parish church, and everything required by law to be done relating thereto by the rector, vicar, curate, or churchwardens respectively of any parish church shall be done by the officiating minister, chapelwarden, or other person exercising analogous duties in such chapel respectively.

Marriages performed in such chapels to be under the same regulations as those performed in parish churches.

31. Notwithstanding any such licence as aforesaid to solemnize marriages in any such chapel, the parties may, if they think fit, have their marriage solemnized in the parish church, or in any chapel in which heretofore the marriage of such parties or either of them might have been legally solemnized.

Option to parties to be married at parish church.

32. Any such licence or order may at any time be revoked by writing under the hand and seal of the bishop of the diocese, with the consent in writing of the archbishop of the province; and such revocation and consent shall be registered in the registry of the diocese, the registrar whereof shall notify the same in writing to the minister officiating in the chapel, and shall also give public notice thereof by advertisement in some newspaper circulating within the county and in the *London Gazette*, and thenceforth the authority to solemnize marriages in such chapel shall cease and determine.

Bishop, with consent of Archbishop, may revoke such licences;

(*n*) See 7 Will. 4 & 1 Vict. c. 22, ss. 33, 34 (*post*, pp. 95, 96).

(*o*) Superseded by 7 Will. 4 & 1 Vict. c. 22, s. 33 (*post*, p. 95), and repealed by 37 & 38 Vict. c. 35.

in which case registers to be sent to the incumbent of the parish church.

33. In case of the revocation of the licence to solemnize marriages in any such chapel all registers of marriages solemnized therein under such licence which shall be in the custody or possession of the minister of such chapel at the time of such revocation shall forthwith be transmitted to the incumbent or officiating minister of the parish church, and shall thenceforth be preserved, and in all other respects dealt with in the same manner, and be of the same force and validity to all intents, and purposes, as if they had been originally made and deposited with such incumbent or officiating minister; and that such incumbent or minister shall, when he next transmits to the superintendent registrar copies of the registers of marriages solemnized in such parish church, also therewith transmit copies of all such entries as shall have been made in such first-mentioned registers subsequent to the date of the last entry a copy whereof was transmitted to the superintendent registrar, and shall also transmit to him one copy of every register book so transmitted to him of which no copy shall have been already transmitted to the superintendent registrar, having first signed his name at the foot of the last entry therein.

Registrars of dioceses to send to the register office, yearly, lists of licensed chapels within their districts.

34. The registrar of every diocese shall within fifteen days after the said first day of March, and also within fifteen days after the first day of January in every succeeding year, make out and send through the post office, directed to the Registrar-General of Births, Deaths, and Marriages, at his office, a list of all chapels belonging to the Church of England within that diocese wherein marriages may lawfully be solemnized according to the rites and ceremonies of the Church of England, and shall distinguish in such list which have a parish, chapelry, or other recognized ecclesiastical division annexed to them, and which are chapels licensed by the bishop under this Act, and shall state therein the district for which each of such chapels is licensed according to the description thereof in the licence; and the Registrar-General shall in every year make out and cause to be printed a list of all such chapels, and also of all places of public worship registered under the provisions of this Act, and shall state in such list the county and registrar's district within which each chapel or registered building is situated, and shall add also the names and places of abode of the registrars and deputy registrars of each district, and of the superintendent registrars; and a copy of such list shall be sent to every registrar and superintendent registrar.

List of all chapels and buildings registered to be printed.

35. [*Marriages under this Act cognizable (p).*]

Registrar may ask certain particulars of parties.

36. It shall be lawful for the registrar before whom any marriage is solemnized according to the provisions of this Act to ask of the parties to be married the several particulars required to be registered touching such marriage (*q*).

Persons vexatiously entering caveat liable to costs and damages.

37. Every person who shall enter a caveat with the superintendent registrar against the grant of any licence or issue of any certificate on grounds which the Registrar-General shall declare to be frivolous, and that they ought not to obstruct the grant of the licence, shall be liable for the costs of the proceedings, and for damages to be recovered in a special action upon the case by the party against whose marriage such caveat shall have been entered (*r*).

38. [*Persons making false declarations, &c. guilty of perjury (s).*]

Persons unduly solemnizing marriage guilty of felony.

39. Every person who *after the said 1st day of March* shall knowingly and wilfully solemnize any marriage in England, except by special licence, in any other place than a church or chapel in which marriages may be solemnized according to the rites of the church of England, or than the registered building or office specified in the notice and certificate as aforesaid, shall be guilty of felony (except, in the case of a marriage between two of the Society of Friends commonly called Quakers (*t*) according to the usages of the said society, or between two persons professing the Jewish religion, according to the usages of the Jews); and every person who in any such registered building or office shall knowingly and wilfully solemnize any marriage in the absence of a registrar of

(*p*) Repealed by 37 & 38 Vict. c. 35.

(*q*) See 6 & 7 Will. 4, c. 86, s. 31 (*post*, p. 91).

(*r*) See 7 Will. 4 & 1 Vict. c. 22, s. 5 (*post*, p. 94).

(*s*) Repealed by 37 & 38 Vict. c. 35.

(*t*) Modified by 23 Vict. c. 18 (*post*, p. 115), and 35 Vict. c. 10 (*post*, p. 117).

the district (*u*) in which such registered building or office is situated shall be guilty of felony; and every person who shall knowingly and wilfully solemnize any marriage in England after the said first day of March (except by licence) within twenty-one days after the entry of the notice to the superintendent registrar as aforesaid . . . (*x*) or after three calendar months after such entry, shall be guilty of felony (*y*).

40. Every superintendent registrar who shall knowingly and wilfully issue any certificate for marriage after the expiration of three calendar months after the notice shall have been entered by him as aforesaid, or any certificate for marriage by licence before the expiration of *seven days* (*z*) after the entry of the notice, or any certificate for marriage without licence before the expiration of twenty-one days after the entry of the notice, or any certificate the issue of which shall have been forbidden as aforesaid by any person authorized to forbid the issue of the registrar's certificate, or who shall knowingly and wilfully register any marriage herein declared to be null and void, and every registrar who shall knowingly and wilfully issue any licence for marriage after the expiration of three calendar months after the notice shall have been entered by the registrar as aforesaid, or who shall knowingly and wilfully solemnize in his office any marriage herein declared to be null and void, shall be guilty of felony (*a*).

Superintendent registrars unduly issuing certificates guilty of felony.

41. Every prosecution under this Act shall be commenced within the space of three years after the offence committed.

Limitation of prosecution.

42. If any persons shall knowingly and wilfully intermarry after *the said first day of March* under the provisions of this Act in any place other than the church, chapel, registered building, or office or other place specified in the notice and certificate as aforesaid, or without due notice to the superintendent registrar, or without certificate of notice duly issued, or without licence, in case a licence is necessary under this Act, or in the absence of a registrar or superintendent registrar where the presence of a registrar or superintendent registrar is necessary under this Act (*b*), the marriage of such persons, except in any case herein-after excepted, shall be null and void: Provided always, that nothing herein contained shall extend to annul any marriage legally solemnized according to the provisions of the Marriage Act, 1823 (*c*).

Marriages void if unduly solemnized with the knowledge of both parties.

43. [*In cases of fraudulent marriages, the guilty party to forfeit all property accruing from the marriage, as in 4 Geo. 4, c. 76 (d).*]

44. This Act shall be taken to be part of the said Act for registering births, deaths, and marriages (*e*), as fully and effectually as if incorporated therewith, and that all the provisions and penalties of the said Act relating to any registrar or register of marriages, or certified copies thereof, shall be taken to extend to the registrars and registers of marriages to be solemnized under this Act, and to the certified copies thereof, so far as the same are applicable thereunto (*f*).

Provisions of Registry Act extended to this Act.

45. This Act shall extend only to England, and shall not extend to the marriage of any of the Royal Family.

Extent of Act.

(*u*) Modified by 61 & 62 Vict. c. 58, s. 15 (*post*, p. 135), as to marriages authorized and solemnized under that Act.

(*x*) Words here omitted repealed by 37 & 38 Vict. c. 35.

(*y*) See 7 Will. 4 & 1 Vict. c. 22, s. 3 (*post*, p. 94).

(*z*) Now "one whole day" (19 & 20 Vict. c. 119, s. 9, *post*, p. 107).

(*a*) See 7 Will. 4 & 1 Vict. c. 22, s. 3 (*post*, p. 94).

(*b*) Modified by 61 & 62 Vict. c. 58, s. 15 (*post*, p. 135), as to marriages authorized and solemnized under that Act.

(*c*) 4 Geo. 4, c. 76 (*ante*, p. 71).

(*d*) Repealed by 37 & 38 Vict. c. 35 (see 19 & 20 Vict. c. 119, s. 19, *post*, p. 110).

(*e*) 6 & 7 Will. 4, c. 86 (*post*, p. 90).

(*f*) See 21 & 22 Vict. c. 25, s. 3 (*post*, p. 115).

SCHEDULES to which this Act refers.

SCHEDULE (A) (g).

SCHEDULE (B) (g).

SCHEDULE (C) (g).

SCHEDULE (D).

I, [John Cox], registrar of the district of [Stepney] in the county of [Middlesex], do hereby certify, that this is a true copy of the entries of marriage registered in the said district from the entry of the marriage of [John Wood] and [Ann Simpson], number [one], to the entry of the marriage of [James Smith] and [Martha Green], number [fourteen]. Witness my hand this [first] day of [July, 1837].

(Signed) [John Cox],
Registrar.

[The *italics* in this schedule to be filled up as the case may be.]

THE BIRTHS AND DEATHS REGISTRATION ACT, 1836.

6 & 7 WILL. 4, c. 86.

An Act for registering Births, Deaths, and Marriages in England.

Preamble recites 52 Geo. 3, c. 146, and 4 Geo. 4, c. 76. S. 1, which repealed so much of those Acts as related to registration of marriages, was repealed in 1874 (37 & 38 Vict. c. 88, s. 54). Sects. 2—15 provide for the creation of a general registry office in London under a Registrar-General, and for the creation of local registration districts and the appointment of registrars.

Register
books to be
provided.

17. The Registrar-General shall cause to be printed on account of the said register office a sufficient number of register books for making entries of all . . . marriages of His Majesty's subjects in England, according to the form of schedules . . . C. to this Act annexed : and the said register books shall be of durable materials and in them shall be printed upon each side of every leaf the heads of information herein required to be known and registered of . . . and marriages . . . and every page of each of such books shall be numbered progressively from the beginning to the end, beginning with number one : and every place of entry shall also be numbered progressively from the beginning to the end of the book, beginning with number one, and every entry shall be divided from the following entry by a printed line.

Marriage
register books
to be fur-
nished to
clergy.

30. The Registrar-General shall furnish or cause to be furnished to the rector, vicar or curate of every church and chapel in England (*h*) wherein marriages may lawfully be solemnized, and also to every person whom the recording clerk of the Society of Friends, commonly called Quakers, at their central office in London, shall from time to time certify in writing under his hand to the Registrar-General to be a registering officer in England of the said society, and also to every person whom the president for the time being of the London committee of deputies of the British Jews shall from time to time certify in writing under his hand to the Registrar-General to be the secretary of a synagogue in England of persons professing the Jewish religion (*i*), a sufficient

(g) Repealed by 37 & 38 Vict. c. 35.

(h) This applies only to churches, &c. of the Established Church ; as to others, *vide* 61 & 62 Vict. c. 58 (*post*, p. 133).

(i) Extended, 19 & 20 Vict. c. 119, s. 22 (*post*, p. 110), as to Jews ; and by 61 & 62 Vict. c. 58 (*post*, p. 133), to persons authorized under that Act.

number in duplicate of marriage register books and forms for certified copies thereof, as hereinafter provided . . . (k).

31. Every clergyman of the Church of England, immediately after every office of matrimony solemnized by him, shall register (l) in duplicate in two of the marriage register books the several particulars (m) relating to that marriage according to the form of the said schedule C. (n):

Marriage registers to be kept in duplicate.

and every such registering officer of the Quakers, as soon as conveniently may be after the solemnization of marriage between two (o) Quakers in the district for which he is registering officer :

and every such secretary of a synagogue, immediately after any marriage solemnized between any two persons professing the Jewish religion, of whom the husband shall belong to the synagogue whereof he is secretary, shall register or cause to be registered in duplicate in two of the said marriage register books the several particulars relating to that marriage according to the form of the said schedule C. :

and every such registering officer or secretary, whether he shall or shall not be present at such marriage, shall satisfy himself that the proceedings in relation thereto have been conformable to the usages of the said society, or of the persons professing the Jewish religion as the case may be :

and every such entry as herein-before is mentioned (whether made by such clergyman or by such registering officer or secretary respectively as aforesaid) shall be signed by the clergyman or by the said registering officer or secretary, as the case may be and by the parties married, and by two witnesses, and shall be made in order from the beginning to the end of each book, and the number of the place of entry in each duplicate marriage register book shall be the same.

33. The rector, vicar, or curate of every such church and chapel, and every such registering officer and secretary shall, in the months of April, July, October and January respectively (p) make and deliver (q) to the superintendent registrar of the district in which such church or chapel may be situated, or which may be assigned by the Registrar-General to such registering officer or secretary, a true copy certified by him under his hand of all the entries of marriages in the register book kept by him since the last certificate . . . and if there shall have been no marriage entered therein since the last certificate, shall certify the fact under his hand, and shall keep the said marriage register book safely until the same shall be filled ; and one copy of every such register book when filled shall be delivered to the superintendent registrar of the district (r).

34. Every superintendent registrar shall four times in every year, on such days as shall be therefore named by the Registrar-General, send to the Registrar-General all the certified copies of the registers of . . . marriages which he shall have so received during three calendar months next preceding such quarterly days of transmission respectively : and if it shall appear, by interruption of the regular progression of numbers or otherwise, that the copy of any part of any book has not been duly delivered to him, he shall procure, as far as possible, consistently with the provisions of this Act, that the same may be remedied and supplied ; and every such superintendent registrar shall be entitled to receive the sum of two pence for every entry in such certified copies ; and every superintendent registrar shall make out an account four times in every year of the number of entries in the certified copies sent to him during the last quarter ; and the certified copies so sent to the general registry office shall be thereafter kept in the said office in such order and manner as the Registrar-General under

Transmission of certified copies by superintendent registrar to Registrar-General.

(k) Rest of section repealed in 1858 (21 & 22 Vict. c. 25).

(l) For fee, see 7 Will. 4 & 1 Vict. c. 22, s. 27 (*post*, p. 95).

(m) *Vide* sect. 40 (*post*, p. 92).

(n) *Vide* 7 Will. 4 & 1 Vict. c. 22, s. 27 (*post*, p. 95).

(o) But see now 23 Vict. c. 18 (*post*, p. 115), and 35 Vict. c. 10 (*post*, p. 117).

(p) As to making their registers up, see 7 Will. 4 & 1 Vict. c. 22, s. 26 (*post*, p. 95).

(q) For penalty for non-delivery, see 7 Will. 4 & 1 Vict. c. 22, s. 28 (*post*, p. 95).

(r) Supplemented by 7 Will. 4 & 1 Vict. c. 22, ss. 27, 29 (*post*, p. 95).

the direction of the *Local Government Board(s)* shall think fit, so that the same may be most readily seen and examined.

Searches of registers and certificates by keepers thereof: fees.

35. Every rector, vicar, or curate, and every registrar, registering officer and secretary, who shall have the keeping for the time being of any register book of . . . marriages, shall at all reasonable times allow searches to be made of any register book in his keeping, and shall give a copy certified under his hand (*t*) of any entry or entries in the same, on payment of the fee herein-after mentioned: (that is to say) for every search extending over a period not more than one year, the sum of 1*s.*, and 6*d.* additional for every additional year, and the sum of 2*s.* 6*d.* for every single certificate (*u*).

Indexes and searches.

37 (*x*). The Registrar-General shall cause indexes of all the said certified copies of the registers to be made and kept in the general register office; and every person shall be entitled, on payment of the fees hereinafter mentioned, to search the said indexes between the hours of ten in the morning and four in the afternoon of every day, except Sundays, Christmas Day, and Good Friday, and to have a certified copy of any entry in the said certified copies of the registers; and for every general (*y*) search of the said indexes shall be paid the sum of 20*s.*, and for every particular (*z*) search the sum of 1*s.*, and for every such certified copy the sum of 2*s.* 6*d.*, and no more, shall be paid to the Registrar-General or such other officer as shall be appointed for that purpose on his account (*a*).

Certified copies.

38. The Registrar-General shall cause to be made a seal of the said register office, and the Registrar-General shall cause to be sealed or stamped therewith all certified copies of entries given in the said office; and all certified copies of entries purporting to be sealed or stamped with the seal of the said register office shall be received as evidence of the . . . marriage to which the same relates, without any further or other proof of such entry; and no certified copy purporting to be given in the said office shall be of any force or effect which is not sealed or stamped as aforesaid (*b*).

Clergy, &c. may ask parties for particulars registered.

40. It shall be lawful for every clergyman of the Church of England who shall solemnize any marriage in England, and for every registering officer of the Quakers, and every secretary of a synagogue, to ask of the parties married the several particulars herein required to be registered touching such marriage (*c*).

41. Every person who shall wilfully make or cause to be made, for the purpose of being inserted in any register of . . . marriage, any false statement touching any of the particulars herein required to be known and registered, shall be subject to the same pains and penalties as if he were guilty of perjury (*d*).

Penalty for not duly registering marriages or for losing or injuring the register.

42. Every person who shall refuse or without reasonable cause omit to register any marriage solemnized by him, or which he ought to register, and every person having the custody of any register book, or certified copy thereof, or of any part thereof, who shall carelessly lose or injure the same, or carelessly allow the same to be injured whilst in his keeping, shall forfeit a sum not exceeding 50*l.* for every such offence (*e*).

(*s*) Substituted for the Secretary of State by 34 & 35 Vict. c. 70, ss. 2, 7, Sched.

(*t*) The certificate is admissible in evidence on its mere production if it be certified as a copy of the register (*R. v. Weaver*, L. R. 2 C. C. R. 85).

(*u*) There is no charge for extracts taken by the searcher (*Steele v. Williams*, 8 Ex. 655; 22 L. J. Ex. 225).

(*x*) Sect. 36 was repealed in 1874 (37 & 38 Vict. c. 88).

(*y*) *I.e.*, "a search during any number of successive hours, not exceeding six, without stating the object of the search" (37 & 38 Vict. c. 88, s. 42).

(*z*) *I.e.*, "a search over any period not exceeding five years for a particular entry" (37 & 38 Vict. c. 88, s. 42).

(*a*) By sect. 39 the sums received are to be accounted for to the Exchequer.

(*b*) Cf. sect. 14 of the Evidence Act, 1851 (14 & 15 Vict. c. 99), and see Taylor on Evidence (10th ed.).

(*c*) *Vide* sect. 31, *ante*, p. 91, and Sched. C.

(*d*) See *R. v. Brown*, 1 Den. Cr. Cas. 291.

(*e*) This section was repealed as to births and deaths in 1874 (37 & 38 Vict. c. 88,

44. Provided always, that no person charged with the duty of registering any . . . marriage who shall discover any error to have been committed in the form or substance of any such entry, shall be therefore liable to any of the penalties aforesaid, if within one calendar month next after the discovery of such error, in the presence of . . . the parties married, . . . or, in case of the death or absence of the respective parties aforesaid, then in the presence of the superintendent registrar and of two other credible witnesses who shall respectively attest the same, he shall correct the erroneous entry, according to the truth of the case, by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereunto the day of the month and year when such correction shall be made: Provided also, that in the case of a marriage register he shall make the like marginal entry attested in like manner in the duplicate marriage register book to be made by him as aforesaid, and in every case shall make the like alteration in the certified copy of the register book to be made by him as aforesaid (sect. 33), or, in case such certified copy shall have been already made, provided he shall make and deliver in like manner a separate certified copy of the original erroneous entry, and of the marginal correction therein made (*f*).

46. Appeals to Quarter Sessions where fine exceeding 5*l*. imposed on summary conviction (*g*).

47. Convictions not to be quashed for want of form. No certiorari (*h*).

49. Provided always, that nothing herein contained shall affect . . . the right of any officiating minister to receive the fees now usually paid for the performance or registration of any . . . marriage.

Correction of accidental errors.

Saving of officiating minister's right to fees.

* * * * *

SCHEDULE (C).

1836.—MARRIAGES solemnized at the Parish Church in the Parish of Mary-le-bone,
in the County of Middlesex.

Sect. 17.

No.	When Married.	Name and Surname.	Age.	Con- dition.	Rank or Profession.	Residence at the Time of Marriage.	Father's Name and Surname.	Rank or Profession of Father.
1	17 March, 1836.	William Hastings.	Of full Age.	Bachelor.	Carpenter.	3, South Street.	Peter Hastings.	Upholsterer.
		Sophia Ann Mitchell.	Minor.	Spinster.	—	17, High Street.	Geoffry Mitchell.	Butcher.

Married in the *parish church* according to the rites and ceremonies of the *Established Church*, by *licence*, or *after banns*, by me,
James Hollingshead, Vicar.

This marriage was solem- { *William Hastings,* } in the { *John Hastings,*
nized between us, { *Sophia Ann Mitchell,* } presence of us, { *Geoffry Mitchell.*

[The words and figures in *italics* in this schedule to be filled in as the case may be.]

s. 54). Sect. 43, relating to destroying or falsifying register books, was repealed in 1861 (24 & 25 Vict. c. 95, s. 1), and replaced by 24 & 25 Vict. c. 98, s. 36.

(*f*) Sect. 45, relating to recovery of penalties before two justices on summary conviction, was repealed in 1874 (37 & 38 Vict. c. 88).

(*g*) As to procedure on appeal, see 42 & 43 Vict. c. 49, s. 31.

(*h*) Sect. 48 was repealed in 1874 (37 & 38 Vict. c. 88, s. 54).

THE BIRTHS AND DEATHS REGISTRATION ACT, 1837.

7 WILL. 4 & 1 VICT. c. 22.

An Act to explain and amend Two Acts passed in the last Session of Parliament, for Marriages, and for Registering Births, Deaths and Marriages in England.

Preamble recites 6 & 7 Will. 4, cc. 85 (l) and 86 (m).

Meaning of notice of marriage to registrar, and registrar's certificate of notice in recited Acts.

Superintendent registrar unduly issuing licences, or solemnizing marriages, guilty of felony.

Copy of Registrar-General's declaration of frivolous caveat to be evidence.

Superintendent registrar's office to be deemed within district, though not situate therein.

Registrar-General to fix the number of registrars of marriage.

Provision for use of the Welsh tongue in marriages in Wales.

1. Where in the Marriage Act, 1836, provision is made for giving notice of marriage to any registrar, and where in the Births and Deaths Registration Act, 1836, or any schedule thereunto annexed mention is made of any such notice, or of the registrar's certificate of any such notice, the same shall be construed respectively to mean the notice to be given to the superintendent registrar, and the certificate thereof to be issued by the superintendent registrar according to the provisions for that purpose contained in the last-recited Act.

3. Every superintendent registrar who shall knowingly and wilfully issue any licence for marriage after the expiration of three calendar months after the notice shall have been entered by the superintendent registrar as provided by the Marriage Act, 1836, or who shall knowingly and wilfully solemnize or permit to be solemnized in his office any marriage in the last-recited Act declared to be null and void, shall be guilty of felony.

5. For the purpose of enabling any person to recover costs and damages in any action, as provided by the Marriage Act, 1836 (n), from any person who shall have entered a caveat on frivolous grounds with the superintendent registrar, a copy of the declaration of the Registrar-General purporting to be sealed with the seal of the general register office shall be evidence that the Registrar-General has declared such caveat to have been entered on frivolous grounds, and that they ought not to obstruct the grant of the licence or issue of the certificate, as the case may be; and such declaration shall have the effect of the declaration required in such case by the Marriage Act, 1836 (o).

12. The superintendent registrar's office shall be taken, for the purposes of the Marriage Act, 1836 (p), and the Births and Deaths Registration Act, 1836, and of this Act, to be within the district of which it is the register office, although not locally situated therein.

22. The Registrar-General shall be authorized to fix from time to time the number of registrars of marriages to be appointed by any superintendent registrar; and no superintendent registrar shall have power to appoint more than the number so fixed for him to appoint (q).

23. The Registrar-General, under the direction of the Local Government Board (r), shall take order that the solemn declaration and form of words to be used (s) in the case of marriages under the Marriage Act, 1836, be truly and exactly translated into the Welsh tongue, and shall cause the same so translated to be furnished to every registrar of marriages throughout Wales, and in all places where the Welsh tongue is commonly used; and it shall be lawful to use the declaration and form of words so translated, and published by authority, in all places where the Welsh tongue is commonly used or preferred in such manner and form and to the same intents and purposes as by the said Act is prescribed in the English tongue (t).

(l) *Ante*, p. 81.
 (m) *Ante*, p. 90.
 (n) Sect. 37 (*ante*, p. 88).
 (o) Sects. 10, 11, empower the Registrar-General to unite or divide superintendent registrars' districts. Sect. 9 deals with extra-parochial places.
 (p) See sect. 20 (*ante*, p. 85).
 (q) This limits 6 & 7 Will. 4, c. 85, s. 17 (*ante*, p. 84).
 (r) Substituted for a Secretary of State by 34 & 35 Vict. c. 70, ss. 2, 9, Sched.
 (s) See 6 & 7 Will. 4, c. 85, s. 20 (*ante*, p. 85); 19 & 20 Vict. c. 119, s. 2 (*post*, p. 105); 61 & 62 Vict. c. 58, s. 6 (*post*, p. 134).
 (t) See also 61 & 62 Vict. c. 58, s. 14 (*post*, p. 135).

26. The certified copies of the entries of . . . marriages required by the Marriage Act, 1836, and the Births and Deaths Registration Act, 1836 . . . to be made and delivered to the superintendent registrar (*u*), and also the certificates to be made and delivered to the superintendent registrar that there has been no birth, death, or marriage registered since the delivery of the last certificate, shall in every case be made up and refer respectively to the last days of March, June, September and December then next preceding, and not to the time of the making or delivery of such certified copy or certificate when made on any subsequent day.

Certified copies of register books under recited Acts, &c., shall be made up quarterly.

27. And whereas it is required by the Births and Deaths Registration Act, 1836 (*x*), that every rector, vicar, and curate shall register in duplicate the particulars of every marriage solemnized by him, one of which registers he is also required to deliver, when filled, to the superintendent registrar of the district in which such church or chapel may be situated, and also four times in every year to deliver to the said superintendent registrar a true copy, certified by him under his hand, of all the entries of marriage in the register book kept by him since the last certificate; be it enacted, that the said superintendent registrar shall pay or cause to be paid to the said rector, vicar, or curate the sum of sixpence for every entry contained in such certified copy; which sum shall be reimbursed to the said superintendent registrar by the guardians or overseers of the union, parish or place for which he shall be appointed superintendent registrar as aforesaid, in like manner as by the said Act is provided for the payment of the registrar on production of his accounts to the superintendent registrar.

Clergyman to be paid for registering marriages in public.

28. Every person who under the provisions of the Marriage Act, 1836, and the Births and Deaths Registration Act, 1836, or either of them, as amended by this Act, is required to make and deliver to any superintendent registrar a certified copy of the entries of any . . . marriages registered by him, or the certificate required by the said Acts as amended by this Act that there have been no entries since the last certificate, and who, after being duly required to deliver such certified copy or such certificate as aforesaid, shall refuse or during one calendar month neglect so to do, shall be liable for every such offence to forfeit a sum not exceeding ten pounds, to be recovered as other penalties for offences against the said Acts are made recoverable: provided always, that in such a case a moiety of the penalty shall not go to the informer, but the whole shall go to the Registrar-General, or such other person as the Treasury shall appoint, for the use of his Majesty (*y*).

Penalty for neglecting to send certified copies of register books, &c.

29. In every case in which any rector, vicar, or curate is required by either the Marriage Act, 1836, and Births and Deaths Registration Act, 1836, or by this Act, to give or deliver any notice, certificate, or certified copy to any superintendent registrar, it shall be sufficient for such rector, vicar, or curate to give or deliver the same to some registrar under the superintendence of such superintendent registrar; and every registrar on receiving any such notice, certificate, or certified copy shall give or deliver the same to the superintendent registrar; and each superintendent registrar shall direct the registrars of births and deaths under his superintendence quarterly, or oftener if he shall think fit or shall be so ordered to do by the Registrar-General, to collect the notices, certificates, and certified copies from every rector, vicar, and curate within his district (*y*).

Certificates, &c., required to be given to any superintendent registrar may be given to any registrar, who is to forward the same to superintendent registrar, &c.

30. [And for removing of all doubt with regard to the administration of oaths, be it enacted that] every person before whom by the said Acts or either of them an oath is directed to be taken, is hereby authorized to administer the same.

Power to administer oaths.

33. The banns of marriage of any persons may be published in any chapel licensed by the bishop, according to the Marriage Act, 1836, for the solemnization of marriages (*z*) in which those persons might lawfully be married; and instead of the notice required by the said Act the words "Banns may be published and

Banns may be published in chapels where marriages may be solemnized.

(*u*) Under 6 & 7 Will. 4, c. 86, s. 33 (*ante*, p. 91).

(*x*) Sects. 31, 33 (*ante*, p. 91).

(*y*) *Vide* 6 & 7 Will. 4, c. 86, ss. 32, 33 (*ante*, p. 91).

(*z*) See 6 & 7 Will. 4, c. 85, s. 26 (*ante*, p. 86).

Marriages may be in licensed chapels, though only one of the parties is resident in the district. Publication of banns where the parties reside in different districts.

Any building licensed, &c. as a Roman Catholic chapel may be registered for celebration of marriages as a separate building.

Notice to superintendent registrar, and issue of certificate by him, shall be used and stand instead of publication of banns.

marriages may be solemnized in this chapel" shall be placed in some conspicuous part in the interior of every such chapel.

34. And whereas doubts may arise whether under the said recited Acts it is lawful for the bishop to license chapels for marriages between parties, one only of whom resides within the district specified in such licence: Be it therefore enacted and declared, that all such licences shall be construed to extend to and authorize marriages in such chapels between parties, one or both of whom is or are resident within the said district: Provided always that where the parties to any marriage intended to be solemnized after publication of banns shall reside within different ecclesiastical districts, the banns for such marriage shall be published as well in the church or chapel wherein such marriage is intended to be solemnized, as in the chapel licensed under the provisions of the said recited Act, for the other district within which one of the parties is resident, and if there be no such chapel then in the church or chapel in which the banns of such last-mentioned party might be legally published if the said recited Act had not been passed (a).

35. [And whereas certain provisions are made in the Marriage Act, 1836, relating to the celebration of marriages in separate buildings, be it enacted that] any building which shall have been licensed and used during one year next before registration for public religious worship as a Roman Catholic chapel exclusively shall be taken to be a separate building for the purpose of being registered for the celebration of marriages, notwithstanding the same shall be under the same roof with any other building, or shall form a part only of a building (b).

36. [Recital of 6 & 7 Will. 4, c. 85, s. 1 (c).] The giving of notice to the superintendent registrar, and the issue of the superintendent registrar's certificate, as in the said Act and by this Act provided, shall be used and stand instead of the publication of banns to all intents and purposes where no such publication shall have taken place; and every parson, vicar, minister, or curate in England shall solemnize marriage after such notice and certificate as aforesaid in like manner as after due publication of banns: Provided always, that the church wherein any marriage according to the rites of the Church of England shall so be solemnized shall be within the district of the superintendent registrar by whom such certificate as aforesaid shall have been issued (d).

THE MARRIAGE ACT, 1840.

3 & 4 VICT. c. 72.

An Act to provide for the Solemnization of Marriages in the Districts in or near which the Parties reside. [7th August, 1840.]

Whereas by an Act passed in the fourth year of the reign of King George the Fourth, intituled "An Act for amending the Laws respecting the Solemnization of Marriage in England" (e), it is provided, that in all cases where banns shall have been published, the marriage shall be solemnized in one of the parish churches or chapels where such banns shall have been published, and in no other place whatsoever; and whereas by an Act passed in the seventh year of the reign of his late Majesty, intituled "An Act for Marriages in England" (f), provision is made for marriages intended to be solemnized in England, after notice given, according to the forms authorized by the last-recited Act, which Act has been explained and amended by an Act passed in the first year of the reign of her present Majesty (g): and whereas it is expedient to restrain

(a) *Vide* 6 & 7 Will. 4, c. 85, s. 26 (*ante*, p. 86).

(b) See 6 & 7 Will. 4, c. 85, s. 18 (*ante*, p. 84).

(c) *Ante*, p. 80.

(d) See sects. 1, 4 and 16 of that Act, 19 & 20 Vict. c. 119, s. 11 (*post*, p. 108). See also p. 24.

(e) 4 Geo. 4, c. 76 (*ante*, p. 71).

(f) 6 & 7 Will. 4, c. 85 (*ante*, p. 80).

(g) 7 Will. 4 & 1 Vict. c. 22 (*ante*, p. 94).

marriages under the said Act of his late Majesty from being solemnized out of the district in which one of the parties dwells, unless either of the parties dwells in a district within which there is not any registered building, wherein, under the provisions of the said Act of his late Majesty, as explained and amended by the said Act of her present Majesty, marriage is solemnized according to the form, rite, or ceremony the parties see fit to adopt: it is not and shall not be lawful for any superintendent registrar to give any certificate of notice of marriage where the building in which the marriage is to be solemnized, as stated in the notice, shall not be within the district wherein one of the parties shall have dwelt for the time required by the said Act of his late Majesty, except as herein-after is enacted (*h*).

2. It shall be lawful for any party intending marriage under the provisions of the said Act of his late Majesty, in addition to the notice required to be given by that Act, to declare at the time of giving such notice, by indorsement thereon, the religious appellation of the body of Christians to which the party professeth to belong, and the form, rite, or ceremony which the parties desire to adopt in solemnizing their marriage, and that, to the best of his or her knowledge and belief, there is not within the district in which one of the parties dwells any registered building in which marriage is solemnized according to such form, rite, or ceremony, and the district nearest to the residence of that party in which a building is registered wherein marriage is so solemnized, and the registered building within such district in which it is intended to solemnize their marriage; and after the expiration of seven days (*i*) or twenty-one days, as the case may require, under the said Act of his late Majesty, it shall be lawful for the superintendent registrar to whom any such notice shall have been given to issue his certificate (*k*), according to the provisions of that Act: and after the issuing of such certificate the parties shall be at liberty to solemnize their marriage in the registered building stated in such notice: provided always, that after any marriage shall have been solemnized it shall not be necessary in support of such marriage to give any proof of the truth of the facts herein authorized to be stated in the notice, nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage (*l*).

3. The additional notice herein-before authorized to be given may be according to the form in the schedule to this Act annexed, or to the like effect.

4. Every person who shall knowingly and wilfully make any false declaration under the provisions of this Act, for the purpose of procuring any marriage out of the district in which the parties or one of them dwell, shall suffer the penalties of perjury: provided always, that no such prosecution shall take place after the expiration of eighteen calendar months from the solemnization of such marriage.

5. Provided always, that notwithstanding anything herein or in the said recited Acts or either of them contained, the Society of Friends commonly called Quakers, and also persons professing the Jewish religion, may lawfully continue to contract and solemnize marriage according to the usages of the said society and of the said persons respectively, after notice for that purpose duly given, and certificate or certificates (*m*) duly issued, pursuant to the provision of the said recited Act of his late Majesty, notwithstanding the building or place wherein such marriage may be contracted or solemnized be not situate within the district or either of the districts (as the case may be) in which the parties shall respectively dwell.

Certificate of notice not to be granted for marriage out of the district where the parties dwell, except as hereinafter enacted.

In what case marriage may be solemnized out of the district in which the parties dwell.

Form of notice.

Persons making false declarations guilty of perjury.

Provision as to marriages of members of the Society of Friends, and Jews.

The SCHEDULE to which the Act refers.

I, the undersigned and within-named *James Smith*, do hereby declare, that I, being [*here insert, a member of the Church of England, a Roman Catholic,*

(*h*) Modified by 19 & 20 Vict. c. 119, s. 14 (*post*, p. 108).

(*i*) Now one whole day in the case of a registrar's licence (19 & 20 Vict. c. 119, s. 9, *post*, p. 107).

(*k*) Or his licence (19 & 20 Vict. c. 119, s. 13, *post*, p. 108).

(*l*) 19 & 20 Vict. c. 119, s. 17 (*post*, p. 109).

(*m*) Or licence (19 & 20 Vict. c. 119, s. 21, *post*, p. 110).

Independent, Baptist, Presbyterian, Unitarian, or such other description of the religion of the party], and the within-named *Martha Green*, in solemnizing our intended marriage, desire to adopt the form, rite, or ceremony of the [*Roman Catholic Church, Independents, Baptists, Presbyterians, Unitarians, or other description of the form, rite or ceremony the parties state it to be their desire to adopt*]; and that to the best of my knowledge and belief there is not within the superintendent registrar's district in which [*I dwell*], or [*in which the said Martha Green dwells*], any registered building in which marriage is solemnized according to such form, rite, or ceremony; and that the nearest district to [*my dwelling place*], or to [*the dwelling place of the said Martha Green*], in which a building is registered, wherein marriage may be solemnized according to such form, right, or ceremony, is the [*here insert the name by which the superintendent registrar's district is designated*]; and that we intend to solemnize our marriage in the registered building within that district known by the name of [*here insert the name by which the building has been registered*]. Witness my hand this tenth day of August One thousand eight hundred and forty.

(Signed) *James Smith.*

[The *italics* in this schedule to be filled as the case may be.]

THE CHURCH BUILDING (BANNS AND MARRIAGES) ACT, 1844.

7 & 8 VICT. c. 56.

An Act concerning Banns and Marriages in certain District Churches or Chapels.
[29th July, 1844.]

Whereas an Act was passed in the fifty-ninth year of the reign of King George the Third, intituled “An Act to amend and render more effectual an Act passed in the last Session of Parliament, for building and promoting the building of additional Churches in populous Parishes” (*n*): And whereas another Act was passed in the second year of the reign of his late Majesty, intituled “An Act to amend and render more effectual an Act passed in the seventh and eighth years of the reign of his late Majesty, intituled ‘An Act to amend the Acts for building and promoting the building of additional Churches in populous Parishes’” (*o*): And whereas another Act was passed in the second year of the reign of her present Majesty, intituled “An Act to amend and render more effectual the Church Building Acts” (*p*): And whereas another Act was passed in the fourth year of the reign of her said Majesty, intituled “An Act to further amend the Church Building Acts” (*q*): And whereas doubts are entertained whether banns of matrimony can be published or marriages be solemnized in churches or chapels to which districts have been or may hereafter be assigned under the said recited Act passed in the second year of the reign of his late Majesty; and it is expedient to remove such doubts: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in every case in which a district has been or shall be assigned to any church or chapel under the provisions of the said last-mentioned Act it shall be lawful for her Majesty's Commissioners for building new churches, with the consent of the bishop of the diocese, in every such case as has come or shall come before the said Commissioners under the provisions of the said last-mentioned Act, and for the said bishop in every such other case, to determine whether banns of matrimony shall be published and marriages solemnized in any such church or chapel aforesaid or not.

Where a district is assigned under last-recited Act the church building commissioners or the bishop to decide as to banns and marriages.

(*n*) Church Building Act, 1819 (59 Geo. 3, c. 134).

(*o*) Church Building Act, 1831 (1 & 2 Will. 4, c. 38).

(*p*) Church Building Act, 1838 (1 & 2 Vict. c. 107).

(*q*) Church Building Act, 1840 (3 & 4 Vict. c. 60).

2. When and so soon as it shall be determined that banns of matrimony may be published and marriages solemnized in any such church or chapel, the bishop of the diocese within which such church or chapel shall be locally situated, whether in any parish or extra-parochial place, or otherwise, shall certify the same, and such certificate shall be kept in the chest of the church or chapel with the books of registry thereof, and a copy thereof shall be entered in the books of the registry of banns and marriages, and a duplicate of such certificate shall be registered in the registry of the diocese, and such certificate shall be deemed and taken to be conclusive evidence in all Courts, and in all questions relating to any banns published or marriages solemnized in any such church or chapel, that the same might according to law respectively be published and solemnized in such church or chapel, and that all banns published and marriages solemnized in any such church or chapel according to the laws and canons in force within this realm in that behalf shall after the granting of such certificate be good to all intents and purposes whatsoever: Provided always, that no banns or marriages respectively published or solemnized according to the laws and canons in force within the realm in that behalf in any church or chapel in which the same are authorised to be respectively published, solemnized, and had by the said recited Acts or this Act, or either of them, shall be invalid by reason of any such certificate not having been duly given, or registered or entered, as hereinbefore required: Provided also, that all fees, dues, offerings, and other emoluments on account of such marriages, whether of right or custom, belonging to the incumbent or clerk of any parish, chapelry, or place in which such church or chapel has been erected, shall be received by or for or on account of such incumbent or clerk respectively, and be paid over to them, except such of the said fees, dues, offerings, or other emoluments, or such portions thereof, as the said commissioners, with the consent of the bishop of the diocese, the patron, and the said incumbent respectively, in those cases which shall come before the said commissioners, by order made under their common seal, or the bishop of the diocese alone, with the consent of the patron and incumbent, in all other cases, by order under his hand and seal, shall assign to the minister of such church or chapel; and every such instrument of assignment shall be registered in the registry of the bishop of the diocese within which said church or chapel shall be locally situated: Provided always, that nothing hereinbefore contained shall be construed to take away from existing parish clerks any fees, dues, or emoluments to which they are now by law or custom entitled.

Proceedings in cases where it shall be determined that banns may be published and marriages solemnized.

How fees to be disposed of.

3. And whereas, by error, banns have been published, and divers marriages have been solemnized, in chapels with districts assigned to them under the provisions of the herein-before recited Acts or some of them, but in which chapels banns could not be legally published, nor marriages by law be solemnized; and it is expedient to remove all doubts, arising from the circumstances aforesaid, touching the validity of such marriages; be it therefore enacted, that banns already published, and marriages already solemnized, in such chapels as aforesaid, shall not hereafter be questioned on account of the said banns having been published, or the said marriages solemnized, in any such chapel as aforesaid; and the minister or ministers who solemnized the same shall not be liable to any ecclesiastical censure, or to any other proceedings or penalties whatsoever, by reason thereof; and the registers of all marriages so solemnized as aforesaid, or copies of such registers, shall be received in all Courts of law and equity as evidence of such marriages respectively.

The validity of marriages in certain chapels with districts assigned to them not to be questioned.

4. Where a chapelry has been already or shall hereafter be assigned to any chapel under the provisions of the Church Building Act, 1819(*r*), and the Order in Council assigning such chapelry does not direct that marriages may be performed in such chapel, it shall be lawful for her Majesty, by any supplemental Order in Council, on a representation to be made to her by the said commissioners, with the consent of the bishop of the diocese, to order that marriages may be performed thereafter in such chapel; and that all the fees arising therefrom, or a part thereof, should thereafter belong and be paid to the minister of such

Omissions to authorize marriages in chapels may be cured by supplemental Order.

(*r*) 59 Geo. 3, c. 134.

chapel, or after the next avoidance of the parish church, or that all or a portion of such fees should belong and be paid to the incumbent of such parish church; and all the laws in force relating to banns of marriage, and marriages in district chapels, and the registering thereof, shall apply to marriages performed under such supplemental Order in Council.

In any representation to the Queen in Council, &c., the number of the section of the Act under which such representation, &c., is made need only be recited.

Every Order in Council under the Church Building Acts to be inserted in the *London Gazette*, and registered with a map and description of boundaries, but the map not required to be enrolled in Chancery.

Not to affect 6 & 7 Will. 4, c. 85, as to licensing churches, &c. for solemnization of marriages.

5. In any representation to her Majesty in Council, or in any Order of Council to be made thereon, or in any other matter or thing done under their common seal by the said commissioners under the authority of the herein-before recited Acts or any other Act of Parliament, it shall be sufficient to refer to the section or sections as numbered in copies printed by the Queen's printer of the Act or Acts under the authority whereof such representation or Order in Council is made, or such matter or thing done, and it shall not be necessary to recite any of the provisions of such section or sections.

6. Every Order in Council under the provisions of the herein-before recited Acts or any of them, or under the provisions of any other of the Church Building Acts (s) shall, as soon as may be after the making thereof by her Majesty in Council, be inserted and published in the *London Gazette* in like manner as any Order in Council made under the Acts regulating the proceedings of the Ecclesiastical Commissioners of England is published in such gazette, and it shall not be necessary to enrol in the Court of Chancery any map or plan or description of the boundaries of any division or district formed under the provisions of the herein-before recited Acts; or any other of the Church Building Acts; and a map or plan on which shall be marked such boundaries, and which shall be sealed with the common seal of the said commissioners for building new churches, and the Order in Council annexed thereto, shall be registered in the registry of the diocese in the manner directed by the Ecclesiastical Commissioners Act, 1840 (t), and shall be subject to such and the like provisions in all respects relating thereto as are contained in the same Act: Provided always, that nothing in this Act contained shall be taken to repeal or affect any of the authorities contained in the Marriage Act, 1836 (u).

THE ECCLESIASTICAL JURISDICTION ACT, 1847 (x).

10 & 11 VICT. c. 98.

An Act to amend the Law as to Ecclesiastical Jurisdiction in England.

[22nd July, 1847.]

Sect. 5. All authorities, save and except the authority of the bishop of whose diocese any portion has been or may hereafter be taken away and added to another diocese under the provisions of the herein-before recited Act (y), shall continue to grant marriage licences in the same manner and within the same district as they might have done before the passing of the said Act: Provided always that nothing herein contained shall be construed to interfere with the jurisdiction or concurrent jurisdiction, as the case may be, of the bishops of the several dioceses in England to grant marriage licences in and throughout the whole of their dioceses as such are now or hereafter may be limited or constituted.

(s) For list, see Sched. II. to Short Titles Act, 1896 (59 & 60 Vict. c. 14).

(t) 3 & 4 Vict. c. 113.

(u) 6 & 7 Will. 4, c. 85 (*ante*, p. 81).

(x) This section, which was by sect. 7 of temporary duration, has been continued by 21 & 22 Vict. c. 50 and Expiring Laws Continuance Acts (see 9 Edw. 7, c. 46, Sched. I., Pt. I.).

(y) The Ecclesiastical Commissioners Act, 1836 (6 & 7 Will. 4, c. 77).

THE PLACES OF PUBLIC WORSHIP REGISTRATION ACT, 1855.

18 & 19 VICT. c. 81.

An Act to amend the Law concerning the certifying and registering of Places of Religious Worship in England. [30th July, 1855.]

Preamble recites the Toleration Act (1 Will. & Mary (Sess. 1), c. 18); 52 Geo. 3, c. 155; 31 Geo. 3, c. 32; 2 & 3 Will. 4, c. 115 (Roman Catholics); 9 & 10 Vict. c. 59 (Religious Disabilities); and 15 & 16 Vict. c. 81.

1. The said Act of the fifteenth and sixteenth years of Her Majesty, chapter thirty-six, shall be repealed: Provided always, that the certifying thereunder before the passing of this Act of any place of meeting for religious worship shall, subject to the provisions hereinafter contained, have the same force and effect from the time of such certifying as if the same had been duly certified, registered, and recorded as before the passing of the said Act of the fifteenth and sixteenth years of Her Majesty, chapter thirty-six, was required by law, and such Act and this Act had not been passed.

15 & 16 Vict. c. 36, repealed, but places of worship certified thereunder to have force, &c.

2. Every place of meeting for religious worship of Protestant Dissenters or other Protestants and of persons professing the Roman Catholic religion, by the said Acts of King William and Queen Mary (z), the thirty-first (a) and fifty-second years (b) of King George the Third, and the fifteenth and sixteenth years of Her Majesty, chapter thirty-six, or any of them, required to be certified and registered or recorded, as therein mentioned, and not heretofore certified and registered or recorded in manner required by law, and every place of meeting for religious worship of persons professing the Jewish religion, not heretofore certified and registered or recorded as aforesaid, and every place of meeting for religious worship of any other body or denomination of persons, may be certified in writing to the Registrar-General of Births, Deaths, and Marriages in England, through the Superintendent Registrar of Births, Deaths, and Marriages of the district in which such place may be situate; and such certificate shall be in duplicate, and upon forms in accordance with Schedule A. to this Act (c), or to the like effect, such forms to be provided by the said Registrar-General, and to be obtained (without payment) upon application to such superintendent registrar as aforesaid; and the said superintendent registrar shall, upon the receipt of such certificate in duplicate, forthwith transmit the same to the said Registrar-General, who, after having caused the place of meeting therein mentioned to be recorded as hereinafter directed, shall return one of the said certificates to the said superintendent registrar, to be re-delivered by him to the certifying party, and shall keep the other certificate with the records of the General Register Office.

Places of worship to be certified to Registrar-General.

3. The said Registrar-General shall cause all places of meeting for religious worship certified to him under this Act to be recorded in a book to be kept by him for that purpose at the General Register Office, and no such place of meeting as aforesaid shall be certified to or registered in any Court of any bishop or archdeacon, or be certified to or recorded at any general or quarter sessions; and the certifying to the said Registrar-General of any such place of meeting for religious worship of Protestant Dissenters or other Protestants or Roman Catholics, or persons professing the Jewish religion, and of any place of meeting for religious worship of any other body or denomination of persons, shall, subject to the provisions herein contained, have the same force and effect as if such place had been duly certified and recorded or registered and recorded as before the passing of the said Act of the fifteenth and sixteenth years of Her Majesty, chapter thirty-six, was required by law, and such Act and this Act had not been passed.

Places of meeting to be recorded.

(z) 1 Will. & Mary, c. 18, repealed 34 & 35 Vict. c. 48, except ss. 5, 15, and part of s. 8.

(a) 31 Geo. 3, c. 32 (Roman Catholic Relief), for the most part repealed by 34 & 35 Vict. c. 48.

(b) 52 Geo. 3, c. 155 (Places of Religious Worship Act, 1812), ss. 15, 16, 18, 19 are repealed.

(c) *Post*, p. 103.

Places of meeting already certified, save those certified under 15 & 16 Vict. c. 36, may be certified to Registrar-General, and be recorded by him.

Fee of 2s. 6d. to be paid with certificate to superintendent registrar.

Notice to be given to Registrar-General of every place of meeting becoming dis-used for the purposes for which it was certified.

List of certified places to be printed.

Direction to the Registrar-General to cancel records of certificates of places of worship ceasing to be used as such.

Certified places ex-

4. Any place of meeting for religious worship heretofore certified and registered or recorded in manner required by law, and which continues to be used for religious worship, save any such place of meeting certified to the said Registrar-General under the said Act of the fifteenth and sixteenth years of Her Majesty, chapter thirty-six, may, at any time after the passing of this Act, be certified in writing to such Registrar-General through the superintendent registrar of the district in which such place may be situate, and shall be recorded by such Registrar-General in manner hereinbefore mentioned concerning places of meeting not heretofore certified and registered or recorded.

5. Upon the delivery of every certificate to the superintendent registrar for transmission to the Registrar-General for the purpose of being recorded under this Act, the person delivering the same shall pay to such superintendent registrar for his own use the sum of two shillings and sixpence, and it shall not be lawful to demand or take any greater fee or reward for the same respectively.

6. Whenever any place of meeting for religious worship which may have been certified under the said Act of the fifteenth and sixteenth years of Her Majesty, chapter thirty-six, or this Act, shall have wholly ceased to be used as a place of meeting for religious worship, the person or one of the persons who so certified or last certified the same (as the case may be), or the trustee or one of the trustees for the time being of such place of meeting, or the owner or occupier or one of the owners or occupiers thereof, shall, if then resident within the superintendent registrar's district within which such place shall be situate, forthwith give notice to the Registrar-General through such superintendent registrar that such place has so ceased to be used as a place of meeting for religious worship, such notice to be in a form in accordance with the Schedule B. (d) to this Act, or to the like effect, and which form shall be provided by the said Registrar-General, and may be obtained (without payment) upon application to the said superintendent registrar; and the person giving such notice shall sign the same in the presence of such superintendent registrar or of his deputy, who shall forthwith transmit the same through the General Post to the Registrar-General at the General Register Office.

7. The said Registrar-General shall, in the year one thousand eight hundred and fifty-six, and also at such subsequent periods as one of Her Majesty's Principal Secretaries of State shall from time to time in that behalf order or direct, make out and cause to be printed a list of all places of meeting which have been certified to and recorded by him under the said Act of the fifteenth and sixteenth years of Her Majesty, chapter thirty-six, or this Act, and the record of which has not been cancelled as hereinafter provided, and shall state in such list the county and superintendent registrar's district within which each of such places of meeting is situated, and the religious denomination to which the persons for the time being certifying it belong, and shall cause a copy of such list to be sent to every superintendent registrar of births, deaths, and marriages in England, and such list shall be open at all reasonable times to all persons desirous of inspecting the same, on payment to such superintendent registrar of a fee of one shilling.

8. Whenever it shall appear to the satisfaction of the said Registrar-General, from any notice which shall have been given to him as aforesaid or otherwise that any certified place of meeting for religious worship has wholly ceased to be used as such, the said Registrar-General shall cause the record of such certification to be cancelled, and shall give public notice of the cancellation thereof by advertisement in some newspaper circulating within the district in which such place of meeting is situated, and in the *London Gazette*, and shall also expunge the name of such place from the list of certified places so to be printed by him as aforesaid; and after such cancellation and publication thereof as aforesaid such place shall cease to be deemed duly certified as by law required, and shall so remain until it shall have been duly certified afresh under this Act.

9. Every place of meeting for religious worship certified to the said Registrar-General under the said Act of the fifteenth and sixteenth years of Her Majesty,

chapter thirty-six, or this Act, and recorded by him as aforesaid, so long as the same continues to be *bonâ fide* used as a place of religious worship, and the record of the certification thereof has not been cancelled as hereinbefore is provided, shall be wholly freed and exempted from the operation of "The Charitable Trusts Act, 1853(e)," and shall not be subject or liable to any of the provisions of the same Act, save that the exempted charities may avail themselves of the sixty-third and sixty-fourth sections of the said Act, if they shall think fit (f).

empted from the operation of "The Charitable Trusts Act, 1853."

10. Nothing in this Act shall affect or be construed to affect the churches or chapels of the United Church of England and Ireland, or the celebration of divine service according to the rites and ceremonies of the said United Church by ministers of such church, in any place hitherto used for such purpose, or being now or hereafter duly consecrated or licensed by any archbishop or bishop or other person lawfully authorized to consecrate or license the same.

Nothing to affect churches, &c. of Established Church.

11. The Registrar-General, on payment to him of a fee of two shillings and sixpence, shall, with respect to any place certified to him as a place of meeting for religious worship, the record whereof remains uncanceled, give to any person demanding the same a certificate, sealed or stamped with the seal of the General Register Office, that at the time or respective times in such certificate in that behalf stated the place therein described was duly certified and duly recorded as required by this Act, and that at the date of such sealed or stamped certificate the record of such certification remained uncanceled; and every such sealed or stamped certificate, if tendered in evidence upon any trial or other judicial proceeding in any Civil or Criminal Court, shall be received as evidence of the said several facts therein mentioned, without any further or other proof of the same.

Certificate of place having been certified to be given.

12. All sums to be received by or on account of the Registrar-General in pursuance of this Act shall be accounted for and paid in manner directed by the Births and Deaths Registration Act, 1836 (g), with respect to sums received by him or on his account under the provisions of that Act; and all expenses incurred by the said Registrar-General, or by any superintendent registrar, or registrar, with his sanction and acting under his direction or authority, in carrying this Act into execution and making known its provisions, shall be deemed to have been incurred in carrying on the business of the General Register Office, and be defrayed accordingly.

Sums received by or on account of Registrar-General to be accounted for, and expenses defrayed as other expenses of the General Register Office.

13. Notwithstanding the provisions of this or any other Act, all marriages which heretofore have been had or solemnized in any building which has been registered for the solemnization of marriages pursuant to the Marriage Act, 1836 (h), but which may not have been certified as required by the provisions of this or any other Act, shall be as valid in all respects as if such place of worship had been so certified.

To remove doubts as to validity of marriage.

14. This Act shall not extend to Scotland or Ireland.

Extent of Act.

SCHEDULES referred to in the foregoing Act.

SCHEDULE A.

Sect. 2.

To the Registrar-General of Births, Deaths, and Marriages in England.

I, the undersigned (i) of in the county of do hereby, under and by virtue of an Act passed in the year of Her Majesty Queen Victoria,

Directions for filling up this schedule.

(e) 16 & 17 Vict. c. 137. See s. 62.

(f) Sect. 63 was repealed by 32 & 33 Vict. c. 110, s. 17. See ss. 14 and 15 of that Act, and the Charitable Trusts Act, 1894 (57 & 58 Vict. c. 35), s. 4.

(g) 6 & 7 Will. 4, c. 86 (*ante*, p. 90).

(h) 6 & 7 Will. 4, c. 85 (*ante*, p. 81).

(i) Here insert the name, residence, and county in which it is situate, and the rank or profession of the party certifying.

intituled "An Act to amend the Law concerning the certifying and registering of Places of Religious Worship in England," certify that a certain building known by the name of situated at in the county of within the superintendent registrar's district of [was used (b) as a place of meeting for religious worship before the 30th day of June, 1852, and] is intended to be used as heretofore (c) and will accordingly be forthwith used as a place of meeting for religious worship by a congregation or assembly of persons calling themselves (d) and I request that this certificate may be recorded in the General Register Office, pursuant to the said Act. Dated this day of 185 .

(Signature of the party certifying.)

(e)
of the place of meeting above described.

Sect. 6.

SCHEDULE B.

To the Registrar-General of Births, Deaths, and Marriages in England.

I, the undersigned of in the county of being the person or one of the persons who certified or last certified [or being "the trustee," or "one of the trustees," or the "owner," or "occupier," or "one of the owners or occupiers" (as the case may be), of] a certain building known by the name of [or a certain dwelling-house, &c. (as the case may be)] situate at in the county of within the superintendent registrar's district of [and being now resident within the same district] do hereby declare and give you notice, in pursuance of an Act passed in the year of her present Majesty, chapter that the aforesaid building [or dwelling-house, &c.] which was on the day of , 185 recorded by you as a place of meeting for religious worship by a congregation or assembly of persons calling themselves [or by a congregation or assembly of Roman Catholics, or of persons belonging to the Society of Friends, or of persons professing the Jewish religion (as the case may be)], has wholly ceased to be used as a place for public religious worship. Witness my hand, this day of 185 .

THE MARRIAGE AND REGISTRATION ACT, 1856.

19 & 20 VICT. C. 119.

An Act to amend the Provisions of the Marriage and Registration Acts.

[29th July, 1856.]

Whereas an Act was passed in the session holden in the sixth and seventh years of the reign of King William the Fourth, chapter eighty-five (f), intituled "An Act for Marriages in England"; and another Act was passed in the first year of the reign of her Majesty, chapter twenty-two (g), intituled "An Act

(b) If the place was not so used before 30th June, 1852, expunge this and the following line.

(c) If the building have not been previously used as a place of worship, erase the words "as heretofore."

(d) Here insert "Protestant Dissenters," "Independents," "Particular Baptists," "Wesleyan Methodists," "Roman Catholics," "Jews," or other religious denomination of, or religious appellation adopted by, the persons on whose behalf the building is certified; but if those persons decline to describe themselves by any distinctive appellation erase the words "calling themselves," and insert "who object to be designated by any distinctive religious appellation."

(e) Insert on this line immediately under the signature the word "minister," "proprietor," "a trustee," "occupier," "an attendant," or such other words as will clearly show the connection subsisting between the person certifying and the place of meeting.

(f) *Ante*, p. 81.

(g) *Ante*, p. 94.

to explain and amend Two Acts, passed in the last Session of Parliament, for Marriages, and for registering Births, Deaths, and Marriages, in England"; and another Act was passed in the session holden in the third and fourth years of her Majesty, chapter seventy-two (*h*), intituled "An Act to provide for the Solemnization of Marriages in the District in or near to which the Parties reside": And whereas it is expedient to alter and amend the provisions of the said recited Acts, so far as is herein-after provided: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sect. 1. In case of any party intending marriage under the provisions of any of the said recited Acts or of this Act, no notice of such intended marriage shall be read or published before the guardians of any poor law union or parish or place, or be transmitted by any superintendent registrar to the clerk of any such guardians.

No notice of marriage to be read or published before poor law guardians, or be transmitted to the clerk of such guardians.

Sect. 2. In case any party shall intend marriage, under the provisions of any of the said recited Acts or of this Act, the party so intending marriage shall, at the time of giving to the superintendent registrar or respective superintendent registrars, as the case may be, the notice required by the said recited Acts or either of them, make and sign or subscribe a solemn declaration in writing, in the body or at the foot of such notice, that he or she believes that there is no impediment of kindred or alliance or other lawful hindrance to the said marriage, and that the parties to the said marriage, in case the marriage is intended to be had without licence, have, for the space of seven days immediately preceding the giving of such notice, had their usual place of abode and residence within the district of the superintendent registrar or respective superintendent registrars to whom such notice or notices, as the case may be, shall be so given; or, in case such marriage is intended to be had by licence, that one of the said parties hath for the space of fifteen days immediately preceding the giving of such notice had his or her usual place of abode and residence within the district of the superintendent registrar to whom such notice shall be so given; and when either of the parties intending marriage, and not being a widower or widow, shall be under the age of twenty-one years, the party making such declaration shall further declare that the consent of the person or persons whose consent to such marriage is by law required has been given, or (as the case may be) that there is no person whose consent to such marriage is by law required; and every declaration so made as aforesaid shall be signed and subscribed, by the party making the same, in the presence of the superintendent registrar to whom the notice of marriage containing such declaration is given, or in the presence of his deputy, or of some registrar of births and deaths or of marriages for the district in which the party giving such notice resides, or of the deputy of such registrar, who shall respectively attest the same by adding thereto his name, description, and place of abode; and no certificate or licence for marriage shall be issued or granted pursuant to any such notice as aforesaid unless the said notice be accompanied by such solemn declaration duly made and signed or subscribed and attested as aforesaid; and every person who shall knowingly or wilfully make and sign or subscribe any false declaration, or who shall sign any false notice for the purpose of procuring any marriage under the provisions of any of the said recited Acts or this Act, shall suffer the penalties of perjury.

Every notice of marriage to be accompanied by a solemn declaration, by one of the parties, that there is no lawful hindrance to such marriage, &c.

3. Every notice of marriage which shall be given under the provisions of any of the said recited Acts or of this Act, after this Act shall have come into operation, shall be in the form of Schedule (A.) to this Act annexed, or to the like effect; and in every case where the marriage is intended to be had and solemnized under the provisions of the Marriage Act, 1840 (*i*), such notice shall, in addition to the several particulars comprised in the said schedule, contain the declaration required to be made by one of the parties to such intended

Persons making wilfully false declarations to suffer the penalties of perjury. Form of notice of marriage.

(*h*) *Ante*, p. 96.

(*i*) 3 & 4 Vict. c. 72, ss. 2, 3 (*ante*, p. 97).

marriage pursuant to the second section of the said last-mentioned Act; and the superintendent registrar to whom any such notice of marriage shall be so given shall forthwith enter the particulars, and the date thereof, and the name of the party giving the same, into the marriage notice book; and for every such entry the superintendent registrar shall be entitled to have a fee of one shilling.

Notice of marriage without licence to be affixed in superintendent registrar's office.

4. In case any party shall intend marriage without licence under the provisions of any of the said recited Acts or of this Act, the superintendent registrar to whom notice of such intended marriage has been given shall cause the notice of marriage, or a true and exact copy thereof, as entered in the marriage notice book, under the hand of such superintendent registrar, to be suspended or affixed in some conspicuous place in the office of the said superintendent registrar during twenty-one successive days next after the day of the entry of such notice in his "marriage notice book," before any marriage shall be solemnized in pursuance of such notice, and after the expiration of twenty-one days next after the day of the entry of such notice in his "marriage notice book" the superintendent registrar shall issue under his hand, upon the request of the party giving such notice, a certificate in the form or to the effect of the certificate set forth in Schedule (B.) to this Act annexed, provided that in the meantime no lawful impediment to the issuing of such certificate be shown to the satisfaction of the same superintendent registrar, and provided the issue of such certificate shall not have been forbidden in the manner provided by either of the said firstly and secondly recited Acts by some person or persons authorized in that behalf; and every such certificate shall state the particulars set forth in the said notice, and the day on which the same notice was entered, and that the issue of such certificate has not been forbidden by any person or persons authorized in that behalf; and for every such certificate the superintendent registrar shall be entitled to have and receive a fee of one shilling; and at any time within three calendar months next after the day of the entry of such notice the intended marriage may be solemnized under the authority of the said certificate; and every superintendent registrar's certificate for marriage duly issued under the provisions of this Act shall have the same force, validity, and effect as the like certificate issued under the provisions of the said recited Acts or either of them would have had in case this Act had not been passed (*d*).

Notice of marriage by licence not to be suspended in the office of the superintendent registrar.

5. In case any party shall intend marriage by licence under the provisions of any of the said recited Acts or of this Act, notice of such intended marriage shall not be suspended in the office of the superintendent registrar, but the party giving the same shall state therein that such marriage is intended to be celebrated by licence.

In case of marriage by licence, notice to be given to the superintendent registrar of one district shall be sufficient.

6. In any case of marriage intended to be solemnized by licence, under the provisions of either of the said two firstly recited Acts or of this Act, between parties both of whom do not dwell in the same superintendent registrar's district, it shall not be required that notice of such intended marriage shall be given to more than one superintendent registrar, but a notice to the superintendent registrar of the district in which one of the parties so intending marriage resides shall be sufficient; and it shall not be required that the said notice shall state how long each of the said parties has resided in his or her dwelling place, but only how long the party residing in the district in which the notice is given has so resided.

Notice of marriage without licence may be given in Ireland, if one of the parties reside there.

7. In every case in which one of the parties intending marriage without licence, under the provisions of any of the said recited Acts or of this Act, shall dwell in Ireland, the party so dwelling in Ireland shall give notice in the form there used in that behalf or to the like effect to the registrar of the district in Ireland within which such party shall have dwelt for not less than seven days then next preceding, and shall state therein the name and surname and the profession and condition and age of each of the parties intending marriage, and also the dwelling place of each of them, and the time, not being less than seven days, during which he or she shall have dwelt therein, and also the church or other

(*d*) This section is substituted for 6 & 7 Will. 4, c. 85, s. 6.

building in which the marriage is to be solemnized, provided that if either party shall have dwelt in the place stated in the notice as his or her dwelling place more than one month it may be stated that he or she hath dwelt therein one month and upwards; and such notice shall be dealt with in the manner and such certificate for marriage shall be given by such registrar in the mode respectively prescribed in the Marriage (Ireland) Act, 1844 (*e*), as amended by the Marriage (Ireland) Act, 1846 (*f*), provided that in such case the certificate for marriage shall not be issued before the expiration of twenty-one days next after the day of the entry of such notice, as in the first of the said two last-mentioned Acts is provided; and from and after the issuing of such certificate the production of the same to any person duly authorized under the provisions of this Act to solemnize a marriage shall be as valid and effectual for authorizing such person to solemnize such marriage as the production of a certificate for marriage of a superintendent registrar of a district in England would be under any or either of the said three firstly herein-before recited Acts, if the party giving such notice were resident within such district, and the other party to such intended marriage were also resident within another superintendent registrar's district in England; and where marriages have since the passing of the said Act for marriages in Ireland, and for registering such marriages, been solemnized in England between parties, one of whom was resident in Ireland, under certificates, of which one was the certificate of the registrar of the district in Ireland within which one of the parties had dwelt for not less than seven days, and the other the certificate of the superintendent registrar of the district in England within which the other party had dwelt for not less than seven days, such marriages are hereby declared to be and to have been valid in the same manner as if the parties had been respectively resident for not less than seven days in the respective districts of two superintendent registrars in England, and like certificates had been issued by both such superintendent registrars.

8. In every case in which one of the parties intending marriage without licence, under the provisions of any of the said recited Acts or this Act, shall dwell in Scotland, a certificate of proclamation of banns in Scotland under the hand of the session clerk of the parish in which such proclamation shall have been made shall, when produced to any person duly authorized under the provisions of this Act to solemnize a marriage, be as valid and effectual for authorizing such person to solemnize such marriage as the production of a certificate for marriage of a superintendent registrar of a district in England would be, under any or either of the said three firstly-recited Acts, in reference to a party resident within such district.

9. Every superintendent registrar receiving notice of an intended marriage to be solemnized by licence as aforesaid shall, after the expiration of one whole day next after the day of the entry of such notice in his "marriage notice book," issue under his hand, upon the request of the party giving such notice, a certificate in the form or to the effect of the certificate set forth in the said Schedule (B.) to this Act annexed, and also a licence to marry, provided that in the meantime no lawful impediment to the issuing of such certificate be shown to the satisfaction of the same superintendent registrar, and provided the issue of such certificate shall not have been forbidden in the manner provided by either of the said firstly and secondly recited Acts by some person or persons authorized in that behalf; and every such certificate shall state the particulars set forth in the said notice, and the day on which the same notice was entered, and that the issue of such certificate has not been forbidden by any person or persons authorized in that behalf; and for every such certificate the superintendent registrar shall be entitled to have and receive a fee of one shilling; and at any time within three calendar months next after the day of the entry of such notice the intended marriage may be solemnized under the authority of the said licence; and every superintendent registrar's certificate and licence for marriage duly issued under the provisions of this Act shall have

Certificate of proclamation of banns in Scotland as to party resident there equivalent to superintendent registrar's certificate.

In cases of marriage by licence, certificate of the notice thereof may be given by the superintendent registrar (unless the marriage be forbidden), and thereupon the marriage may be solemnized.

(*e*) 7 & 8 Vict. c. 81 (*post*, p. 194).

(*f*) 9 & 10 Vict. c. 72, s. 1 (*post*, p. 215).

the same force, validity, and effect as the like certificate and licence issued under the provisions of the said recited Acts or either of them would have had in case this Act had not been passed.

Form of
licence for
marriage.

10. The form of a licence for marriage so to be granted as aforesaid to any party or parties, by the superintendent registrar of any district as aforesaid, shall be in the form or to the effect of the licence set forth in Schedule (C.) to this Act annexed; and for every such licence the superintendent registrar granting the same shall be entitled to have and receive of the party requiring the same the sum of one pound ten shillings, over and above the amount paid for the stamps necessary on granting such licence (*g*).

Mode of
solemnizing
marriages in
registered
buildings.

11. No such marriage as aforesaid shall be solemnized in any such registered building without the consent of the minister or of one of the trustees, owners, deacons, or managers thereof, nor in any registered building of the Church of Rome (*h*) without the consent of the officiating minister thereof, nor in any church or chapel of the United Church of England and Ireland (*i*) without the consent of the minister thereof (*j*), nor in such latter case by any other than a duly qualified clergyman of the said United Church, or with any other forms or ceremonies than those of the said United Church, any statute or statutes to the contrary notwithstanding (*k*).

Persons de-
siring may
add the
religious
ceremony
ordained by
the church.

12. If the parties to any marriage contracted at the registry office of any district conformably to the said recited Acts or any of them, or to the provisions of this Act, shall desire to add the religious ceremony ordained or used by the church or persuasion of which such parties shall be members to the marriage so contracted, it shall be competent for them to present themselves for that purpose to a clergyman or minister of the church or persuasion of which such parties shall be members, having given notice to such clergyman or minister of their intention so to do; and such clergyman or minister, upon the production of their certificate of marriage before the superintendent registrar, and upon the payment of the customary fees (if any), may, if he shall see fit, in the church or chapel whereof he is the regular minister, by himself or by some minister nominated by him, read or celebrate the marriage service of the persuasion to which such minister shall belong: Provided always, that no minister of religion who is not in Holy Orders of the United Church of England and Ireland shall under the provisions of this Act officiate in any church or chapel of the United Church of England and Ireland; but nothing in the reading or celebration of such service shall be held to supersede or invalidate any marriage so previously contracted, nor shall such reading or celebration be entered as a marriage among the marriages in the parish register: Provided also, that at no marriage solemnized at the registry office of any district shall any religious service be used at such registry office.

Superintendent
registrar to
whom notice is
given may grant
licence for
marriage in a
district in which
neither of the
parties resides.

13. When any marriage is intended to be solemnized between parties not of the Society of Friends commonly called Quakers, or not professing the Jewish religion, by licence under the provisions of the Marriage Act, 1840 (*l*), in a registered building situated in a district within which neither of the parties resides, it shall be lawful for the superintendent registrar to whom notice of such intended marriage shall have been given to grant to the party applying for the same a licence for such marriage to be solemnized in the registered building stated in such notice; and every licence and certificate granted in pursuance of this enactment shall be as valid and effectual to all intents and purposes as if the same had been granted by the superintendent registrar of the district in which the registered building wherein the marriage is intended to be solemnized is situated.

Superinten-
dent registrar
may grant

14. When any marriage is intended to be solemnized, under the provisions of any of the before-recited Acts or of this Act, in the usual place of worship of the parties so intending marriage, or one of them, and such place of worship

(*g*) The Stamp duty is 10s. (54 & 55 Vict. c. 39, Sched. 1).

(*h*) See 61 & 62 Vict. c. 58, s. 1 (3) (*post*, p. 133).

(*i*) As to Church of Ireland, see 32 & 33 Vict. c. 42, s. 69.

(*j*) See 6 & 7 Will. 4, c. 85, s. 1 (*ante*, p. 81), and 7 Will. 4 & 1 Vict. c. 22, s. 36 (*ante*, p. 96).

(*k*) See *ante*, p. 24, for effect of this section on Church of England.

(*l*) 3 & 4 Vict. c. 72 (*ante*, p. 96).

shall be a registered building situated out of the district of their, his, or her residence, it shall be lawful for the superintendent registrar or respective superintendent registrars to whom notice of such marriage shall have been given to grant to the party applying for the same a licence or certificate, as the case may be, for such marriage to be solemnized in the registered building stated in such notice, provided such building be situated not more than two miles beyond the limits of the district in which the notice of such marriage has been given, and the party giving notice of such marriage shall at the time of giving the same state therein, in addition to the description of the building in which the marriage is to be solemnized, that it is the usual place of worship of one of the parties, and shall also state the name of the party whose usual place of worship it is; and every licence and certificate granted in pursuance of this enactment shall be as valid and effectual, to all intents and purposes, as if the same had been granted by the superintendent registrar of the district in which the registered building wherein the marriage is intended to be solemnized is situated.

15. The Registrar-General shall have power and he is hereby authorized from time to time to appoint, by writing under his hand, such person or persons as he may think fit, with such qualifications as the said Registrar-General by any general rule shall have declared to be necessary, to be a registrar or registrars of marriages within the district of any superintendent registrar; and every appointment to be hereafter made by any superintendent registrar of any person or persons to be a registrar or registrars, for the purpose of being present at marriages to be solemnized under and by virtue of any or either of the said recited Acts or of this Act, shall be by writing under the hand of such superintendent registrar, and shall be subject to the approval of the Registrar-General.

16. Every registrar of marriages, already appointed or hereafter to be appointed, shall be and he is hereby empowered, subject to the approval of the Registrar-General, to appoint, by a writing under his hand, a fit person to be and to act as his deputy, in case of the illness or unavoidable absence of such registrar; and every such deputy, while so acting, shall have all the powers and duties and be subject to all the provisions and penalties in the said recited Acts or any or either of them given, imposed, and contained concerning registrars of marriages; and every such deputy shall hold his office during the pleasure of the registrar by whom he was appointed, but shall be removable by the Registrar-General; and every registrar of marriages shall be civilly responsible for the acts and omissions of his deputy; and in case any registrar of marriages shall die, or otherwise cease to hold his office, his deputy shall become the registrar of marriages in his place until the appointment of another registrar of marriages shall have been made, and notified to him by the superintendent registrar or by the Registrar-General, and shall, while continuing such registrar, have the same powers and duties and be subject to the same provisions and penalties as any other registrar of marriages.

17. After any marriage shall have been solemnized, under the authority of any of the said recited Acts or of this Act, it shall not be necessary in support of such marriage to give any proof of the actual dwelling or of the period of dwelling of either of the parties previous to the marriage within the district stated in any notice of marriage to be that of his or her residence, or of the consent to any marriage having been given by any person whose consent thereto is required by law, or that the registered building in which any marriage may have been solemnized had been certified according to law as a place of religious worship, or that such building was the usual place of worship of either of the parties, nor shall any evidence be given to prove the contrary in any suit or legal proceedings touching the validity of such marriage; and all marriages which heretofore have been or which hereafter may be had or solemnized, under the authority of any of the said recited Acts or of this Act, in any building or place of worship which has been registered pursuant to the Marriage Act, 1836 (*n*), but which may not have been certified as required by law, shall be as valid in all respects as if such place of worship had been so certified.

licence for marriage to be solemnized in registered building out of the district wherein the parties reside.

Registrar-General may appoint registrars of marriages; and appointment of registrars of marriages by superintendent registrars to be subject to the approval of the Registrar-General.

Registrar of marriages may appoint a deputy.

Proof of the observance of this Act and of the recited Acts, matters not necessary to the validity of marriages.

(*n*) 6 & 7 Will. 4, c. 85 (*ante*, p. 81).

Penalty on making false declaration, or giving false notices.

In case of fraudulent marriages, the guilty party to forfeit all property accruing from the marriage.

Nothing to alter, &c. provisions of existing Acts, except where at variance with this Act.

Marriages of Quakers or Jews may be solemnized by licence.

Registrar-General to furnish marriage register books and forms to each certified secretary of a synagogue of British Jews.

18. Any person who shall knowingly or wilfully make any false declaration or sign any false notice required by this Act for the purpose of procuring any marriage, and every person who shall forbid the granting by any superintendent registrar of a certificate for marriage by falsely representing himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false, shall suffer the penalties of perjury.

19. If any valid marriage shall be had, under the provisions of any of the said recited Acts or this Act, by means of any wilfully false declaration, notice, or certificate made or obtained by either party to such marriage as to any matter in which a solemn declaration, notice, or certificate is required, it shall be lawful for Her Majesty's Attorney-General or Solicitor-General to sue for a forfeiture of all the estate and interest in any property accruing to the offending party by such marriage, and the proceedings thereupon and the consequences thereof shall be the same as are provided in the like case with regard to marriages solemnized by licence between parties under age according to the rites of the Church of England in the Marriage Act, 1823 (*l*).

20. Except where the provisions of the said recited Acts are expressly altered by or are at variance with the provisions of this Act, nothing herein contained shall alter, repeal, or affect, or be construed so as in any manner to alter, repeal, or affect, any of the several provisions and clauses contained in the same Acts or any of them, but, except as aforesaid, the same provisions and clauses respectively shall be and remain in full force and effect as if this Act had not been passed; and this Act shall, except as aforesaid, be considered as incorporated with the same provisions and clauses, and be construed in connexion therewith; provided that, save as herein-after mentioned, none of the provisions of this Act shall limit or alter, or be construed to limit or alter, the privileges of persons belonging to the Society of Friends commonly called Quakers, or of persons professing the Jewish religion, or impose on either of such bodies any obligations beyond such as are enacted in either of the said recited Acts.

21. Any marriage according to the usages of the Society of Friends commonly called Quakers, or to the usages of persons professing the Jewish religion respectively, where the parties thereto are both members of the said Society or both persons professing the Jewish religion respectively, may be solemnized by licence (which licence the superintendent registrar to whom notice of the intended marriage shall have been given is hereby authorized to grant, in the form or to the effect set forth in the said Schedule (C.) to this Act annexed,) as effectually in all respects as if such marriage were solemnized after the issue of a certificate by such superintendent registrar in the manner provided by the said recited Acts or any of them; and the provisions in this present Act contained in relation to the solemn declaration to be made by the party intending marriage, and to the statement to be contained in the notice of such intended marriage that such marriage is intended to be celebrated by licence, and to the notice to be given of any such intended marriage by licence, and to the giving of certificates in the form or to the effect set forth in Schedule (B.) to this Act annexed, and to the fee and stamp to be paid for such licence, shall be applicable in all respects to every such marriage to be solemnized by licence according to the usages of the said society or to the usages of persons professing the Jewish religion respectively.

22. The Registrar-General shall furnish or cause to be furnished to the person whom twenty householders professing the Jewish religion, and being members of the West London Synagogue of British Jews, shall certify in writing under their hands to the Registrar-General to be the secretary of the West London Synagogue of British Jews, and also to every person whom such secretary shall in like manner certify to be the secretary of some other synagogue of not less than twenty householders professing the Jewish religion, and being in connexion with the West London Synagogue, and having been established for not less than one year, a sufficient number in duplicate of marriage register books and

forms for certified copies thereof; and every secretary of a synagogue to whom such books and forms shall be furnished under this Act shall perform the same duties in relation to the registration of marriages between persons professing the Jewish religion as under the Births and Deaths Registration Act, 1836 ^(m), are to be performed by the secretary of a synagogue to whom marriage register books and forms for certified copies thereof have been or shall be furnished under that Act.

23. Every marriage solemnized under any of the said recited Acts or of this Act shall be good and cognizable in like manner as marriages before the passing of the first-recited Act according to the rites of the Church of England.

Marriages under this Act good and cognizable.

24. And whereas, in pursuance of an Act passed in the session holden in the fifteenth and sixteenth years of Her Majesty, chapter thirty-six, intituled "An Act to amend the Law relating to the certifying and registering Places of Religious Worship of Protestant Dissenters" ⁽ⁿ⁾, the registrars of the several dioceses and archdeaconries, and the clerks of the peace of the several counties, ridings, divisions, cities, and boroughs in England and Wales, did, in the year one thousand eight hundred and fifty-two, make and transmit, as thereby required, to the Registrar-General of Births, Deaths, and Marriages in England, duly verified returns of all places within the limits of their respective jurisdictions which previous to and up to the time of the passing of the last-mentioned Act had been certified according to law and registered or recorded as places of meeting for religious worship: And whereas the total number of such places of meeting so returned to the said Registrar-General pursuant to the provisions of the said Act is fifty-four thousand eight hundred and four, and it is expedient that, for facilitating the proof of such places having been duly certified and registered or recorded as aforesaid, the Registrar-General should be empowered by law to allow searches to be made in the said returns, and to give certified copies thereof and extracts therefrom: Be it further enacted as follows:

The Registrar-General, on payment to him of the several fees herein-after mentioned, shall allow searches to be made in the returns so made to him as aforesaid, and shall give to any person demanding the same a certified copy thereof or extract therefrom with respect to any place of meeting for religious worship contained therein; and every such certified copy or extract shall be sealed or stamped with the seal of the general register office, and when so sealed or stamped as aforesaid, if tendered in evidence upon any trial or other judicial proceeding in any civil or criminal court, shall be received as evidence of the place of meeting therein mentioned or described having been at the time in that behalf therein stated duly certified and registered or recorded as by law required, without any further or other proof of the same; and the Registrar-General shall be entitled to demand and receive for every search in the said returns extending over a period of not more than ten years the sum of one shilling, and for every additional period of ten years the sum of sixpence, and the further sum of two shillings and sixpence for every single certified copy or extract.

Registrar-General to allow searches to be made, and give extracts from the returns of certified places of worship made to him there-to, on payment of specified fees.

25. Save as herein expressly provided, this Act shall not extend to Ireland or Scotland.

Act not to extend to Ireland or Scotland.

26. This Act shall come into operation on the first day of January one thousand eight hundred and fifty-seven, and none of the provisions thereof shall take effect previous to that day.

Commencement of Act.

^(m) 6 & 7 Will. 4, c. 86 (*ante*, p. 90).

⁽ⁿ⁾ 15 & 16 Vict. c. 36; repealed and replaced by the Places of Worship Registration Act, 1855 (18 & 19 Vict. c. 81: *ante*, p. 101).

SCHEDULES.

SCHEDULE (A).

Form of Notice of Marriage.

To the Superintendent Registrar of the District of *Hendon* in the County of *Middlesex*.

I, the undersigned *James Smith*, hereby give you notice, that a marriage is intended to be had *without* [*or by, as the case may be,*] licence within three calendar months from the date hereof between me and the other party herein named and described ; (that is to say)—

Name and Surname.	Con- dition.	Rank or Pro- fession.	Age.	Dwelling Place.	Length of Residence.	Church or Building in which the Marriage is to be solemnized.	District and County in which the Parties respectively dwell.
<i>James Smith.</i>	<i>Widouer.</i>	<i>Iron- monger.</i>	<i>Twenty- five Years.</i>	<i>16, High St., Hendon, Middlesex.</i>	<i>Seven or Fifteen Days, as the Case may be.</i>	<i>Sion Chapel, West Street, Tunbridge, Kent.</i>	<i>Hendon, Middlesex.</i>
<i>Martha Green.</i>	<i>Spinster.</i>		<i>Nineteen Years.</i>	<i>Grove Farm, Tunbridge, Kent.</i>	<i>More than a Month.</i>		<i>Tunbridge, Kent.</i>

And I hereby solemnly declare, that I believe there is no impediment of kindred or alliance or other lawful hindrance to the said marriage, and that *I*, the above-named *James Smith*, have for the space of *fifteen* days immediately preceding the giving of this notice had *my* usual place of abode and residence [*If the marriage is intended to be had in a church or chapel of the Church of England insert in this space the following words, “ in the parish of ,” or “in the ecclesiastical district of ,” (as the case may be,) and add the name of the parish or ecclesiastical district in which one of the parties resides*] within the above-mentioned district of *Hendon*.

[And I further declare, that I am not a minor under the age of twenty-one years, and that the other party herein named and described is not a minor under the age of twenty-one years. (*If one or both of the parties be under age these words must be expunged.*)] (*Or, as the case may be,*)

And I further declare, that she [*or I*] the said *Martha Green*, not being a widow [*or widower*], is [*or am*] a minor under the age of twenty-one years, and that the consent of *George Kilpin*, whose consent to her [*or my*] marriage is required by law, has been duly given and obtained thereto [*or “ that there is no person whose consent to her [*or my*] marriage is by law required ” (as the case may be)*].

And I make the foregoing declarations solemnly and deliberately, conscientiously believing the same to be true, pursuant to the provisions of the Marriage and Registration Act, 1856, well knowing that every person who shall knowingly or wilfully make and sign or subscribe any false declaration or who shall sign any false notice for the purpose of procuring any marriage under the provisions of the said Act above mentioned, or any of the several Acts

therein recited, shall suffer the penalties of perjury. In witness whereof I have hereunto set and subscribed my hand, this fifth day of January, 1858.

James Smith.

Signed and declared by the above-
named James Smith in the
presence of

[Here let the witness attest the signature of the party giving the notice according to one or other of the following "examples":—]

Example.	Name of Witness.	Description.	Place of Abode.
1	John Cox - -	Superintendent Registrar of Hendon District [or Deputy Superintendent Registrar of Hendon District].	Hendon, Middlesex.
2	Peter Green - -	Registrar of Marriages for the Hendon District.	Hendon, Middlesex.

SCHEDULE (B).

Form of Superintendent Registrar's Certificate.

I, John Cox, superintendent registrar of the district of Hendon in the county of Middlesex, do hereby certify, that on the fifth day of January, 1857, notice was duly entered in the marriage notice book of the said district of the marriage intended between the parties herein-after named and described, and of such marriage being intended to be solemnized without [or by, as the case may be,] licence, delivered under the hand of James Smith, one of the parties; (that is to say,)

Name.	Con- dition.	Rank or Pro- fession.	Age.	Dwelling Place.	Length of Residence.	Church or Building in which the Marriage is to be solemnized.	District and County in which the Parties respectively dwell.
James Smith.	Widower.	Iron- monger.	Twenty- five Years.	16, High St., Hendon, Middlesex.	Fifteen Days.	Sion Chapel, West Street, Tunbridge, Kent.	Hendon. Middlesex.
Martha Green.	Spinster.		Nineteen Years.	Grove Farm, Tunbridge, Kent.	More than a Month.		Tunbridge, Kent.

Date of entry of notice, 5th January, 1857.
Date of certificate given, 27th January, 1857. { The issue of this certificate has not been forbidden by any person authorized to forbid the issue thereof.

Witness my hand, this twenty-seventh day of January, 1857.

(Signed) John Cox,
Superintendent Registrar.

This certificate will be void unless the marriage is solemnized within three calendar months after the date of the entry of notice, namely, on or before the fifth day of April, 1857.

SCHEDULE (C).

Form of Superintendent Registrar's Licence for Marriage.

To A. B. of in the county of and C. D. of in the county of

I, the undersigned superintendent registrar of the district of in the county of send greeting:

Whereas in pursuance of some or one of the statutes next herein-after mentioned made and now in force concerning the contracting and solemnizing of marriages in England; (that is to say) the Marriage Act, 1836; the Births and Deaths Registration Act, 1837; the Marriage Act, 1840; and the Marriage and Registration Act, 1856; one of you did on the day of give due notice of your intention to enter into a contract of marriage, and you are desirous that such marriage should be speedily performed at in the district of ; And whereas it has been made to appear to my satisfaction that in regard to your said intended marriage you have severally in all respects complied with the provisions and requirements of the above-mentioned statutes, so far as such provisions and requirements are applicable to and binding upon you or either of you: And whereas no impediment of kindred or alliance or other lawful hindrance to the said marriage has been shown to exist: And whereas the certificate required by law has been duly issued by me: Now therefore I, the said superintendent registrar, by virtue of the power and authority vested in me in that behalf, do hereby grant unto you the aforesaid A. B. and C. D. full licence and permission to proceed in due form of law to contract and solemnize such marriage at in the said district at any time within but not after the expiration of three calendar months next following the day of .

Witness my hand this day of .

E. F.,
Superintendent Registrar of the
above-mentioned district.

THE EXTRA-PAROCHIAL PLACES ACT, 1857.

20 VICT. c. 19.

An Act to provide for the Relief of the Poor in Extra-parochial Places.

[21st March, 1857.]

Bishop may authorize publication of banns in church or chapel of the Church of England in extra-parochial place.

Provisions as to the keeping of marriage registers to extend to any church or chapel where banns may be published.

9. Where any extra-parochial place has belonging to or within it any church or chapel of the Church of England, the bishop of the diocese within which such church or chapel shall be locally situate may, if he think fit, authorize by writing under his hand and seal the publication of banns and the solemnization of marriages by banns or licence in such church or chapel of persons residing within such extra-parochial place, and such written authorization shall be registered in the registry of the diocese (o).

10. Provided always, that all provisions now in force or which may hereafter be established by law relative to providing and keeping marriage registers in any parish churches shall extend and be construed to extend to any church or chapel in which the publication of banns and solemnization of marriages shall be so authorized as aforesaid in the same manner as if the same were a parish church, and everything required by law to be done relative thereto by the churchwardens of any parish church shall be done by the churchwarden or chapelwarden or other officer exercising analogous duties in such church or chapel, or if there shall be no such officer then by such person as shall be appointed in that behalf by the bishop of the diocese.

(o) Doubts on this section were cleared up by 23 & 24 Vict. c. 24, *post*, p. 116.

THE BIRTHS AND DEATHS REGISTRATION ACT, 1858

21 & 22 VICT. c. 25.

An Act to amend the Act concerning the Parochial Registers (p) and the Acts for Marriages and for registering Births, Deaths and Marriages in England.

1. The Registrar-General of Births, Deaths and Marriages in England shall receive and deposit in the General Register Office all the registers and records of . . . marriages now in the custody of the said commissioners, and which they have in their said report (q) recommended to be deposited in the General Register Office and which are mentioned in Appendix A to their said report.

2. Provision for deposit in General Register Office (after examination by order of Secretary of State into their state, custody and authenticity) of non-parochial registers or records of . . . marriages not included in the said appendix.

3. The provisions of the Non-Parochial Registers Act, 1840 (r), from sect. 5 to sect. 19, both inclusive, and the rules, orders and regulations under the said Act shall extend and be applicable to the registers or records deposited in the General Register Office under the Act in like manner as the same are applicable to the registers or records deposited under the said Act . . . (s).

THE MARRIAGE (SOCIETY OF FRIENDS) ACT, 1860.

23 VICT. c. 18.

An Act to amend the Acts relating to Marriages in England and Ireland, by extending certain Provisions thereof to Persons professing with the Society of Friends called Quakers.
[15th May, 1860.]

Whereas by the Marriage Act, 1836 (t), it was enacted, that the Society of Friends, commonly called Quakers, might continue to contract and solemnize marriage according to the usages of the said society, and every such marriage was thereby declared and confirmed good in law, provided that the parties to such marriage were both of the said society; provided also, that notice to the registrar should have been given, and the registrar's certificate should have issued in manner therein-after provided: And whereas by the Marriage (Ireland) Act (u) it was enacted, that the Society of Friends, commonly called Quakers, might continue to contract and solemnize marriage according to the usages of the said society, and that every such marriage should be deemed good in law, provided that the parties to such marriage were both of the said society; provided also, that notice to the registrar shall have been given and the registrar's certificate should have issued in manner therein-after provided: And whereas it is expedient to extend and amend the said recited provisions in manner herein-after mentioned.

1. From and after the thirtieth day of June one thousand eight hundred and sixty marriages may be contracted and solemnized according to the usages of the said Society of Friends, commonly called Quakers, in England and Ireland respectively, not only in the case provided for by the said recited provisions, but also in cases where one only or where neither of the parties to the marriage shall be a member of the said society: *Provided always, that the party or parties who shall not be a member or members of the said society shall profess with or be of the persuasion of the said society (x)*; provided also, that no person who is not a

Marriages of Quakers may be solemnized in cases where one only or where neither of the parties shall be a member of the

(p) 3 & 4 Vict. c. 92.

(q) Of 31st December, 1857.

(r) 3 & 4 Vict. c. 92.

(s) Sect. 4 deals with salary of Registrar-General.

(t) 6 & 7 Will. 4, c. 85 (*ante*, p. 81).

(u) 7 & 8 Vict. c. 81 (*post*, p. 194).

(x) This proviso was amended by 35 & 36 Vict. c. 10 (*post*, p. 117), and repealed by 38 & 39 Vict. c. 66.

Society of Friends, under provisions herein named.

Enactments now in force to extend to every marriage contracted under the authority of this Act.

member of the said society shall be married according to the usages thereof unless he or she shall be authorized thereto under or in pursuance of some general rule or rules of the said society in England and Ireland respectively; and a copy of such general rule or rules purporting to be signed by the recording clerk for the time being of the said society in London and in Dublin respectively shall be admitted as evidence of such general rule or rules in all proceedings touching the validity of any such marriage.

2. All the enactments now in force, whether contained in the said recited Acts or in any other Act or Acts of Parliament, and relating to marriages contracted and solemnized according to the usages of the said society in England and Ireland respectively, and to the registration thereof, so far as the same are not inconsistent with this Act, shall extend and be applicable to every marriage contracted and solemnized by the authority of this Act in England and Ireland respectively, as fully and effectually as if the same enactments were repeated herein.

THE MARRIAGE CONFIRMATION ACT, 1860.

23 & 24 VICT. c. 24.

An Act to remove doubt as to the validity of certain marriages in extra-parochial places. [25th May, 1860.]

[Whereas by the Extra-parochial Places Act, 1857 (*y*), it is enacted, that where any extra-parochial place has belonging to or within it any church or chapel of the Church of England, the bishop of the diocese within which such church or chapel shall be locally situate may, if he think fit, authorize by writing under his hand and seal the publication of banns and the solemnization of marriage by banns or licence in such church or chapel of persons residing within such extra-parochial place, and such written authorization shall be registered in the registry of the diocese: And whereas doubt may arise whether, under the said recited Act, it was lawful for the bishop to license chapels for marriages between parties *one only of whom should be resident* in such extra-parochial place, and whether the licence of chapels, for the marriage of parties resident in such extra-parochial place, authorized marriages between parties one of whom only should be so resident: And whereas it is expedient to remove such doubt: Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:](*z*)

Marriages may be authorized by the bishop in chapels in extra-parochial places, and such marriages shall be valid:

Proviso when parties reside in different districts.

Sect. 25 of 6 & 7 Will. 4, c. 85, to apply to this Act.

1. The authority given by the bishop in consequence of the said recited Act for the publication of banns, and the solemnization of marriages by banns or licence, in such church or chapel, shall be construed to extend to and authorize marriages in such churches or chapels, between parties both or either of them being resident in such extra-parochial place, and all such marriages so had shall be deemed valid in like manner as if such extra-parochial place had been a parish: Provided that, when the parties to any marriage intended to be solemnized after publication of banns shall reside within different ecclesiastical districts, the banns for such marriage shall be published in the church or chapel, authorized under the provisions of the said recited Act, in which the marriage is intended to be celebrated, as well as in the chapel of the other district, licensed under the provisions of one of the statutes in such case made and provided, where one of the parties then is resident, and if there be no such chapel then in the church or chapel in which the banns of such last-mentioned party might be legally published if no such statute had been passed.

2. The provisions in the Marriage Act, 1836, section twenty-five (*a*), shall apply to such marriages as in this Act mentioned.

(*y*) 20 Vict. c. 19, ss. 9, 10, *ante*, p. 114.

(*z*) Words in brackets repealed by 38 & 39 Vict. c. 66.

(*a*) *Ante*, p. 86.

THE COLONIAL MARRIAGES ACT, 1865.

28 & 29 VICT. c. 64.

An Act to remove doubts respecting the validity of certain marriages contracted in Her Majesty's possessions abroad. [29th June, 1865.]

[Whereas laws have from time to time been made by the Legislatures of divers of Her Majesty's possessions abroad for the purpose of establishing the validity of certain marriages previously contracted therein, but doubts are entertained whether such laws are in all respects effectual for the aforesaid purpose beyond the limits of such possessions: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:] (b)

1. Every law made or to be made by the Legislature of any such possession as aforesaid for the purpose of establishing the validity of any marriage or marriages contracted in such possession shall have and be deemed to have had from the date of the making of such law the same force and effect for the purpose aforesaid within all parts of Her Majesty's dominions as such law may have had or may hereafter have within the possession for which the same was made: Provided that nothing in this law contained shall give any effect or validity to any marriage unless at the time of such marriage both of the parties thereto were, according to the law of England, competent to contract the same.

2. In this Act the word "Legislature" shall include any authority competent to make laws for any of Her Majesty's possessions abroad, except the Parliament of the United Kingdom and Her Majesty in Council.

Colonial laws establishing validity of marriages to have effect throughout Her Majesty's dominions. Not to give effect to marriages unless parties are competent to contract marriage. Definition of "Legislature."

THE MARRIAGE (SOCIETY OF FRIENDS) ACT, 1872.

35 & 36 VICT. c. 10.

An Act to extend the provisions of the Acts relating to Marriages in England and Ireland, so far as they relate to Marriages according to the usages of the Society of Friends. [13th May, 1872.]

[Whereas by the Marriage (Society of Friends) Act, 1860 (c), after reciting certain provisions relating to marriages according to the usages of the Society of Friends called Quakers, contained in the Marriage Act, 1836 (d), and certain other provisions relating to such marriages, contained in the Marriages (Ireland) Act, 1844 (e), it was enacted (amongst other things), "that from and after the thirtieth day of June one thousand eight hundred and sixty, marriages might be contracted and solemnized according to the usages of the said Society of Friends commonly called Quakers, in England and Ireland respectively, not only in the case provided for by the said recited provisions, but also in cases where one only or where neither of the parties to the marriage should be a member of the said society;" but in the said Act of 1860 there is contained the following proviso, namely, "Provided always, that the party or parties who shall not be a member or members of the said society shall profess with or be of the persuasion of the said society:"

And whereas, in order that the relief intended to be given by the said last-mentioned Act may be made fully effective, it is expedient that the said recited proviso shall be repealed:

Be it therefore enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in

(b) Words in brackets repealed by 56 Vict. c. 14.

(c) *Ante*, p. 115.

(d) *Ante*, pp. 82, 84, 88.

(e) 7 & 8 Vict. c. 81 (*post*, p. 194).

this present Parliament assembled, and by the authority of the same, as follows :

Amendment
of 23 & 24
Vict. c. 18.

1. From and after the first day of January one thousand eight hundred and seventy-three, the said recited Act of one thousand eight hundred and sixty, shall be construed and shall take effect as if the words next hereinafter specified were omitted therefrom, namely, "Provided always, that the party or parties who shall not be a member or members of the said society shall profess with or be of the persuasion of the said society : " (f)] Provided that no marriage shall be valid under this Act unless when notice of the intention to solemnize such marriage is given to the Superintendent Registrar in England or (as the case may be) to the Registrar of Marriages in Ireland, as required by law, a certificate shall be produced to such Superintendent Registrar or Registrar of Marriages purporting to be signed by some registering officer of the said Society of Friends in England or in Ireland respectively to the effect that the party by whom or on whose behalf such notice is given, or each such party (as the case may be), is authorized thereto under or in pursuance of some general rule or rules of the said society in England or Ireland respectively, and such certificate shall be for all purposes conclusive evidence that the party by whom or on whose behalf such notice is given, or each such party (as the case may be), is duly authorized to proceed to the accomplishment of such marriage according to the usages of the said society, and the register of such marriage, or a copy thereof duly certified according to law, shall be conclusive evidence of the due production of such certificate as aforesaid ; but no such certificate shall be required in cases where the party giving such notice shall declare, either verbally or in writing if thereunto required, that both the parties to the intended marriage are either members of the said society or in profession with or of the persuasion thereof.

THE MARRIAGES VALIDITY ACT, 1886 (g).

49 & 50 VICT. C. 3.

An Act to remove Doubts as to the Validity of certain Marriages.

[29th March, 1886.]

Whereas doubts have been entertained as to the validity of certain marriages solemnized in England, *one of the parties to such marriages being resident in Scotland :*

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Banns, where
one party
resident in
Scotland.

1. No marriage solemnized, or to be hereafter solemnized, in any church in England, after publication of banns in such church, shall be, or be deemed to have been, invalid by reason only that one of the parties to such marriage was at the time of such publication resident in Scotland, and that banns may have been published or proclaimed in any church of the parish or place in which such party was resident, according to the law or custom prevailing in Scotland, and not in the manner required for the publication of banns in England.

(f) Words in brackets repealed 1893 (S. L. R. No. 2).

(g) Short title given by sect. 2 of the Act.

THE MARRIAGE ACT, 1886 (*h*).

49 VICT. c. 14.

An Act for extending the Hours within which Marriages may be lawfully solemnized. [10th May, 1886.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1.—(1.) From and after the passing of this Act it shall be lawful to solemnize a marriage at any time between the hours of eight in the forenoon and three in the afternoon. Hours for solemnization of marriages.

(2.) Section twenty-one of the Marriage Act, 1823 (*i*), which provides for the punishment of persons solemnizing matrimony during unlawful hours, shall have effect as if the words " eight in the forenoon and three in the afternoon " were substituted therein for the words " eight and twelve o'clock in the forenoon," and no person shall be subject to any proceedings in any court, ecclesiastical or temporal, for solemnizing matrimony between the aforesaid hours of eight in the forenoon and three in the afternoon.

2. This Act shall not extend to Scotland or Ireland.

3. This Act may be cited as the Marriage Act, 1886.

Extent of Act.

Short title.

THE FOREIGN MARRIAGE ACT, 1892.

55 & 56 VICT. c. 23.

An Act to consolidate Enactments relating to the Marriage of British Subjects outside the United Kingdom. [27th June, 1892.]

[Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :]

1. All marriages between parties of whom one at least is a British subject solemnized in the manner in this Act provided in any foreign country or place by or before a marriage officer (*k*) within the meaning of this Act shall be as valid in law as if the same had been solemnized in the United Kingdom with a due observance of all forms required by law. Validity of marriages solemnized abroad in manner provided by Act.

2. In every case of a marriage intended to be solemnized under this Act, one of the parties intending marriage shall sign a notice, stating the name, surname, profession, condition, and residence of each of the parties, and whether each of the parties is or is not a minor, and give the notice to the marriage officer within whose district both of the parties have had their residence not less than one week then next preceding, and the notice shall state that they have so resided. Notice to marriage officer of intended marriage.

3.—(1.) The marriage officer shall file every such notice, and keep it with the archives of his office, and shall also, on payment of the proper fee, forthwith enter in a book of notices to be kept by him for the purpose, and post up in some conspicuous place in his office, a true copy of every such notice, and shall keep the same so posted up during fourteen consecutive days before the marriage is solemnized under the notice. Filing in registry and posting up of notice.

(2.) The said book and copy posted up shall be open at all reasonable times, without fee, to the inspection of any person.

4.—(1.) The like consent shall be required to a marriage under this Act as is required by law to marriages solemnized in England (*l*). Requirement of like consent to marriage as in England,

(2.) Every person whose consent to a marriage is so required may, at any time before the solemnization thereof under this Act, forbid it by writing the

(*h*) Short title given by sect. 3 of the Act.

(*i*) *Ante*, p. 75.

(*k*) Defined in sect. 11 (*post*, p. 121).

(*l*) *Ante*, Chap. II. pp. 7—10.

and power to
forbid mar-
riage.

Caveat
against
marriages
may be lodged
with marriage
officer.

When mar-
riage not
solemnized
within three
months a
new notice
required.

Oath before
marriage.

Solemnization
of marriage
at office in
presence of
marriage
officer and
two witnesses.

word "forbidden" opposite to the entry of the intended marriage in the book of notices, and by subscribing thereto his name and residence, and the character by reason of which he is authorized to forbid the marriage; and if a marriage is so forbidden the notice shall be void, and the intended marriage shall not be solemnized under that notice (*m*).

5.—(1.) Any person may on payment of the proper fee enter with the marriage officer a caveat, signed by him or on his behalf, and stating his residence and the ground of his objection against the solemnization of the marriage of any person named therein, and thereupon the marriage of that person shall not be solemnized until either the marriage officer has examined into the matter of the caveat and is satisfied that it ought not to obstruct the solemnization of the marriage, or the caveat is withdrawn by the person entering it.

(2.) In a case of doubt the marriage officer may transmit a copy of the caveat, with such statement respecting it as he thinks fit, to a Secretary of State, who shall refer the same to the Registrar-General (*n*), and the Registrar-General shall give his decision thereon in writing to the Secretary of State, who shall communicate it to the marriage officer.

(3.) If the marriage officer refuses to solemnize or to allow to be solemnized in his presence the marriage of any person requiring it to be solemnized, that person may appeal to a Secretary of State, who shall give the marriage officer his decision thereon.

(4.) The marriage officer shall forthwith inform the parties of and shall conform to any decision given by the Registrar-General or Secretary of State.

6. Where a marriage is not solemnized within three months next after the latest of the following dates:—

(a) The date on which the notice for it has been given to and entered by the marriage officer under this Act, or

(b) if on a caveat being entered a statement has been transmitted to a Secretary of State, or if an appeal has been made to a Secretary of State, then the date of the receipt from the Secretary of State of a decision directing the marriage to be solemnized,

the notice shall be void, and the intended marriage shall not be solemnized under that notice.

7. Before a marriage is solemnized under this Act, each of the parties intending marriage shall appear before the marriage officer, and make, and subscribe in a book kept by the officer for the purpose, an oath—

(a) that he or she believes that there is not any impediment to the marriage by reason of kindred or alliance, or otherwise; and

(b) that both of the parties have for three weeks immediately preceding had their usual residence within the district of the marriage officer; and

(c) where either of the parties, not being a widower or widow, is under the age of twenty-one years, that the consent of the persons whose consent to the marriage is required by law has been obtained thereto, or, as the case may be, that there is no person having authority to give such consent.

8.—(1.) After the expiration of fourteen days after the notice of an intended marriage has been entered under this Act, then, if no lawful impediment to the marriage is shown to the satisfaction of the marriage officer, and the marriage has not been forbidden in manner provided by this Act, the marriage may be solemnized under this Act.

(2.) Every such marriage shall be solemnized at the official house of the marriage officer, with open doors, between the hours of eight in the forenoon and three in the afternoon, in the presence of two or more witnesses, and may be solemnized by another person in the presence of the marriage officer, according to the rites of the Church of England, or such other form and ceremony as the parties thereto see fit to adopt, or may, where the parties so desire, be solemnized by the marriage officer.

(*m*) Cf. 6 & 7 Will. 4, c. 85, s. 9, *ante*, p. 83.

(*n*) Cf. "Consent of Proper Parties," *ante*, p. 10.

(3.) Where such marriage is not solemnized according to the rites of the Church of England, then in some part of the ceremony, and in the presence of the marriage officer and witnesses, each of the parties shall declare,

“I solemnly declare, that I know not of any lawful impediment why I A. B. [*or* C. D.] may not be joined in matrimony to C. D. [*or* A. B.].”

And each of the parties shall say to the other,

“I call upon these persons here present to witness, that I A. B. [*or* C. D.] take thee, C. D. [*or* A. B.], to be my lawful wedded wife [*or* husband]” (*o*).

9.—(1.) The marriage officer shall be entitled, for every marriage solemnized under this Act by him or in his presence, to have from the parties married the proper fee (*p*). Marriage fees to marriage officer and registration of marriages.

(2.) He shall forthwith register in duplicate every such marriage in two marriage register books, which shall be furnished to him from time to time for that purpose by the Registrar-General (through a Secretary of State), according to the form provided by law for the registration of marriages in England, or as near to that form as the difference of the circumstances admits.

(3.) The entry in each book of every such marriage shall be signed by the marriage officer, by the person solemnizing the marriage, if other than the marriage officer, by both the parties married, and by two witnesses of the marriage.

(4.) All such entries shall be made in regular order from the beginning to the end of each book, and the number of the entry in each duplicate shall be the same.

(5.) The marriage officer by whom or in whose presence a marriage is solemnized under this Act may ask of the parties to be married the several particulars required to be registered touching the marriage.

10.—(1.) In January in every year every marriage officer shall make and send to a Secretary of State, to be transmitted by him to the Registrar-General, a copy, certified by him to be a true copy, of all the entries of marriages during the preceding year in the register book kept by him, and if there has been no such entry, a certificate of that fact; and every such copy shall be certified, and certificate given, under his hand and official seal. Annual forwarding of copies of register book to Secretary of State.

(2.) The marriage officer shall keep the duplicate marriage register books safely until they are filled, and then send one of them to a Secretary of State, to be transmitted by him to the Registrar-General.

11.—(1.) For the purposes of this Act the following officers shall be marriage officers, that is to say:— Marriage officers and their districts.

(a) Any officer authorized in that behalf by a Secretary of State by authority in writing under his hand (in this Act referred to as a marriage warrant); and

(b) Any officer who, under the marriage regulations herein-after mentioned is authorized to act as marriage officer without any marriage warrant,

and the district of a marriage officer shall be the area within which the duties of his office are exerciseable, or any such less area as is assigned by the marriage warrant or any other warrant of a Secretary of State, or is fixed by the marriage regulations.

(2.) Any marriage warrant of a Secretary of State may authorize to be a marriage officer—

(a) a British ambassador residing in a foreign country to the government of which he is accredited, and also any officer prescribed as an officer for solemnizing marriages in the official house of such ambassador;

(b) the holder of the office of British consul in any foreign country or place specified in the warrant; and

(o) Cf. 6 & 7 Will. 4, c. 85, s. 20, *ante*, p. 85, and 61 & 62 Vict. c. 58, s. 6, *post*, p. 134.

(p) See Consular Fees Order in Council, 1906.

- (c) a governor, high commissioner, resident, consular or other officer, or any person appointed in pursuance of the marriage regulations to act in the place of a high commissioner or resident, and this Act shall apply with the prescribed modifications to a marriage by or before a governor, high commissioner, resident, or officer so authorised by the warrant, and in such application shall not be limited to places outside Her Majesty's dominions.

(3.) If a marriage warrant refers to the office without designating the name of any particular person holding the office, then, while the warrant is in force, the person for the time being holding or acting in such office shall be a marriage officer.

(4.) A Secretary of State may, by warrant under his hand, vary or revoke any marriage warrant previously issued under this Act.

(5.) Where a marriage officer has no seal of his office, any reference in this Act to the official seal shall be construed to refer to any seal ordinarily used by him, if authenticated by his signature with his official name and description.

Marriages on board Her Majesty's ships on foreign stations.

12. A marriage under this Act may be solemnized on board one of Her Majesty's ships on a foreign station, and with respect to such marriage—

- (a) subject to the marriage regulations a marriage warrant of a Secretary of State may authorise the commanding officer of the ship to be a marriage officer;

- (b) the provisions of this Act shall apply with the prescribed modifications.

Avoidance of objections to marriages on account of want of formalities or authority of officer.

13.—(1.) After a marriage has been solemnized under this Act it shall not be necessary, in support of the marriage, to give any proof of the residence for the time required by or in pursuance of this Act of either of the parties previous to the marriage, or of the consent of any person whose consent thereto is required by law, nor shall any evidence to prove the contrary be given in any legal proceeding touching the validity of the marriage.

(2.) Where a marriage purports to have been solemnized and registered under this Act in the official house of a British ambassador or consul, or on board one of Her Majesty's ships, it shall not be necessary in support of the marriage, to give any proof of the authority of the marriage officer by or before whom the marriage was solemnized and registered, nor shall any evidence to prove his want of authority, whether by reason of his not being a duly authorised marriage officer or of any prohibitions or restrictions under the marriage regulations or otherwise, be given in any legal proceeding touching the validity of the marriage.

Forfeiture of property in case of fraudulent marriage.

14. If a marriage is solemnized under this Act by means of any wilfully false notice signed, or oath made by either party to the marriage, as to any matter for which a notice, or oath, is by this Act required, the Attorney-General may sue for the forfeiture of all estate and interest in any property in England accruing to the offending party by the marriage; and the proceedings thereupon, and the consequences thereof, shall be the same as are provided by law in the like case with regard to marriages solemnized in England according to the rites of the Church of England (q).

Punishment of false oath or notice.

15. If a person—

- (a) knowingly and wilfully makes a false oath or signs a false notice, under this Act, for the purpose of procuring a marriage, or
(b) forbids a marriage under this Act by falsely representing himself to be a person whose consent to the marriage is required by law, knowing such representation to be false,

such person shall suffer the penalties of perjury, and may be tried in any county in England and dealt with in the same manner in all respects as if the offence had been committed in that county.

Evidence.

16.—(1.) Any book, notice, or document directed by this Act to be kept by the marriage officer or in the archives of his office, shall be of such a public nature as to be admissible in evidence on its mere production from the custody of the officer.

(2.) A certificate of a Secretary of State as to any house, office, chapel, or other place being, or being part of, the official house of a British ambassador or consul shall be conclusive.

17. All the provisions and penalties of the Marriage Registration Acts, relating to any registrar, or register of marriages or certified copies thereof, shall extend to every marriage officer, and to the registers of marriages under this Act, and to the certified copies thereof (so far as the same are applicable thereto), as if herein re-enacted and in terms made applicable to this Act, and as if every marriage officer were a registrar under the said Acts (*u*). Application of
Registration
Acts to this
Act.

18. Subject to the marriage regulations, a British consul, or person authorised to act as British consul, on being satisfied by personal attendance that a marriage between parties, of whom one at least is a British subject, has been duly solemnized in a foreign country, in accordance with the local law of the country, and on payment of the proper fee, may register the marriage in accordance with the marriage regulations as having been so solemnized, and thereupon this Act shall apply as if the marriage had been registered in pursuance of this Act, except that nothing in this Act shall affect the validity of the marriage so solemnized. Registration
of marriages
solemnized
under local
law.

19. A marriage officer shall not be required to solemnize a marriage, or to allow a marriage to be solemnized in his presence, if in his opinion the solemnization thereof would be inconsistent with international law or the comity of nations; Power to
refuse solemn-
ization of
marriage
where mar-
riage incon-
sistent with
international
law.

Provided that any person requiring his marriage to be solemnized shall, if the officer refuses to solemnize it or allow it to be solemnized in his presence, have the right of appeal to the Secretary of State given by this Act.

20. The proper fee under this Act shall be such fee as may for the time being be fixed under the Consular Salaries and Fees Act, 1891 (*x*); and the fee so fixed as respects a consul shall be the fee which may be taken by any marriage officer; and the provisions relating to the levying, application, and remission of and accounting for fees under that Act shall apply to the same when taken by any marriage officer who is not a consul. Fees.
54 & 55 Vict.
c. 36.

21.—(1.) Her Majesty the Queen in Council may make regulations (in this Act referred to as the marriage regulations) (*y*)— Power to
make
marriage
regulations.

- (a) Prohibiting or restricting the exercise by marriage officers of their powers under this Act in cases where the exercise of those powers appears to Her Majesty to be inconsistent with international law or the comity of nations, or in places where sufficient facilities appear to Her Majesty to exist without the exercise of those powers, for the solemnization of marriages to which a British subject is a party; and
- (b) Determining what offices, chapels, or other places are, for the purposes of marriages under this Act, to be deemed to be part of the official house or the office of a marriage officer; and
- (c) Modifying in special cases or classes of cases the requirements of this Act as to residence and notice, so far as such modification appears to Her Majesty to be consistent with the observance of due precautions against clandestine marriages; and
- (d) Prescribing the forms to be used under this Act; and
- (e) Adapting this Act to marriages on board one of Her Majesty's ships; and to marriages by or before a governor, high commissioner, resident or other officer, and authorising the appointment of a person to act under this Act in the place of a high commissioner or resident; and

(*u*) *V. ante*, pp. 90, 94, 105.

(*x*) See Consular Fees Order in Council, 1906 (St. R. & O. 1906, No. 961, ss. 20—24). As to China and Corea, St. R. & O. 1906, No. 962.

(*y*) For the regulations made under this section, *v. post*, pp. 126—132. As to Japan, see St. R. & O. 1906, No. 963.

- (f) Determining who is to be the marriage officer for the purpose of a marriage in the official house of a British ambassador, or on board one of Her Majesty's ships, whether such officer is described in the regulations or named in pursuance thereof, and authorising such officer to act without any marriage warrant; and
- (g) Determining the conditions under which and the mode in which marriages solemnized in accordance with the local law of a foreign country may be registered under this Act; and
- (h) Making such provisions as seem necessary or proper for carrying into effect this Act or any marriage regulations; and
- (i) Varying or revoking any marriage regulations previously made.

(2.) All regulations purporting to be made in pursuance of this section may be made either generally or with reference to any particular case or class of cases, and shall be published under the authority of Her Majesty's Stationery Office, and laid before both Houses of Parliament, and deemed to be within the powers of this Act, and shall while in force have effect as if enacted by this Act.

(3.) Any marriage regulations which dispense for any reason, whether residence out of the district or otherwise, with the requirements of this Act as to residence and notice, may require as a condition or consequence of the dispensation, the production of such notice, certificate, or document, and the taking of such oath, and may authorise the publication or grant of such notice, certificate, or document, and the charge of such fees as may be prescribed by the regulations; and the provisions of this Act, including those enacting punishments with reference to any false notice or oath, shall apply as if the said notice, certificate, or document were a notice, and such oath were an oath, within the meaning of those provisions.

22. It is hereby declared that all marriages solemnized within the British lines by any chaplain or officer or other person officiating under the orders of the commanding officer of a British army serving abroad, shall be as valid in law as if the same had been solemnized within the United Kingdom, with a due observance of all forms required by law.

23. Nothing in this Act shall confirm or impair or in anywise affect the validity in law of any marriage solemnized beyond the seas, otherwise than as herein provided, and this Act shall not extend to the marriage of any of the Royal family.

24. In this Act, unless the context otherwise requires,—

The expression "Registrar-General" means the Registrar-General of Births, Deaths, and Marriages in England:

The expression "Attorney-General" means Her Majesty's Attorney-General, or if there is no such Attorney-General, or the Attorney-General is unable or incompetent to act, Her Majesty's Solicitor-General, for England:

The expression "the Marriage Registration Acts" means the Act of the session of the sixth and seventh years of the reign of King William the Fourth, chapter eighty-six, intituled "An Act for Registering Births, Deaths, and Marriages in England" (z) and the enactments amending the same:

The expression "official house of a marriage officer" means, subject to the provisions of any marriage regulations, the office at which the business of such officer is transacted, and the official house of residence of such officer, and, in the case of any officer, who is an officer for solemnizing marriages in the official house of an ambassador, means the official house of the ambassador:

The expression "consul" means a consul-general, consul, vice-consul, pro-consul, or consular agent:

The expression "ambassador" includes a minister and a chargé d'affaires:

The expression "prescribed" means prescribed by marriage regulations under this Act.

(z) *Ante*, p. 80.

Validity of
marriages
solemnized
within
British lines.
Saving.

Definitions.

25. This Act shall come into operation on the first day of January next after the passing thereof. Commence-
ment of Act.

26.--(1.) The Acts specified in the schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned. Repeal and
savings.

Provided that—

(a) any Order in Council in force under any Act so repealed shall continue in force as if made in pursuance of this Act; and

(b) any proceedings taken with reference to a marriage, any register book kept, and any warrant issued in pursuance of the Acts hereby repealed, shall have effect as if taken, kept, and issued in pursuance of this Act; and

(c) The fees which can be taken in pursuance of the Acts hereby repealed may continue to be taken in like manner as if fixed in pursuance of the Consular Salaries and Fees Act, 1891, and may be altered accordingly; and

(d) The forms prescribed by or in pursuance of the Acts hereby repealed may continue to be used as if prescribed by an Order in Council under this Act.

(2.) Every marriage in fact solemnized and registered by or before a British consul or other marriage officer in intended pursuance of any Act hereby repealed shall, notwithstanding such repeal or any defect in the authority of the consul or the solemnization of the marriage elsewhere than at the consulate, be as valid as if the said Act had not been repealed, and the marriage had been solemnized at the consulate by or before a duly authorised consul; (a)

Provided that this enactment shall not render valid any marriage declared invalid before the passing of this Act by any competent court, or render valid any marriage either of the parties to which has, before the passing of this Act, lawfully intermarried with any other person.

27. This Act may be cited as the Foreign Marriage Act, 1892.

Short title.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title.	Extent of Repeal.
4 Geo. 4, c. 91	An Act to relieve His Majesty's subjects from all doubt concerning the validity of certain marriages solemnized abroad.	The whole Act, so far as unrepealed.
12 & 13 Vict. c. 68.	The Consular Marriage Act, 1849.	The whole Act.
31 & 32 Vict. c. 61.	The Consular Marriage Act, 1868.	The whole Act.
33 & 34 Vict. c. 14.	The Naturalization Act, 1870.	In section eleven, the words, "and of the marriages of persons married at any of Her Majesty's embassies or legations."
53 & 54 Vict. c. 47.	The Marriage Act, 1890 ..	The whole Act.
54 & 55 Vict. c. 74.	The Foreign Marriage Act, 1891.	The whole Act.

(a) For other unrepealed Acts validating certain marriages abroad, see list of Marriage Validation Acts, *post*, pp. 236—238.

FOREIGN MARRIAGES ORDER IN COUNCIL, 1892.

At the Court at Balmoral, the 28th day of October, 1892.

Whereas by the Foreign Marriage Act, 1892 (*b*) (in this Order referred to as the Foreign Marriage Act), certain enactments relating to the marriage of British subjects outside the United Kingdom are consolidated, and Her Majesty the Queen in Council is authorised to make regulations for the purposes therein specified :

Now, therefore, Her Majesty, by virtue and in exercise of the powers conferred by the said Act or otherwise enabling Her in this behalf, is pleased by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Embassy Marriages.

1. The person before and by whom a marriage under the Foreign Marriage Act may be solemnized and registered in an embassy house in a foreign country shall either be the ambassador, or the officer for the time being performing the duties of the ambassador, or be any of the secretaries attached to the embassy from time to time appointed for the purpose in writing by the ambassador or by the officer performing his duties ; and for the purpose of marriages solemnized in such embassy house, such ambassador, officer performing his duties, or secretary shall, without any marriage warrant, be a marriage officer.

2. For the purpose of the Foreign Marriage Act and these regulations, the house in which a British ambassador resides in the foreign country to the government of which he is accredited, or which is occupied by him in that country for the purposes of his embassy, shall be deemed to be the official house of such ambassador, and is in this Order referred to as the embassy house, and every place within the precincts or curtilage of any such house, and any church or chapel annexed to such house, or for the time being used with the consent of the government to which the ambassador is accredited as the chapel thereof, shall be deemed to form part of the embassy house.

For the purpose of marriages in an embassy house, the expression “ office,” when used with respect to the place where any act or thing shall or may be done, shall be construed to refer to such part of the embassy house as the ambassador may from time to time appoint as being sufficiently accessible to the public.

Embassy and Consular Marriages.

3. Where a marriage can be solemnized at a British Consulate in a foreign country, the leave of the ambassador shall be obtained before the marriage is solemnized in the embassy house in that country.

4.—(1.) Where a marriage according to the local law of a foreign country is valid by English law, then before the marriage is solemnized in that country under the Foreign Marriage Act, whether in an embassy house or at a consulate, the marriage officer must be satisfied either—

- (a) That both the parties are British subjects ; or
- (b) If only one of the parties is a British subject, that the other is not a subject or citizen of the country ; or
- (c) If one of the parties is a British subject, and the other a subject or citizen of the country, that sufficient facilities do not exist for the solemnization of the marriage in the foreign country in accordance with the law of that country.

(2.) If a marriage officer, by reason of anything in this article, refuses to solemnize or allow to be solemnized in his presence the marriage of any person requiring such marriage to be solemnized, that person shall have the right of appeal to a Secretary of State given by section 5 of the Foreign Marriage Act.

5. In the case of any marriage under the Foreign Marriage Act, if it appears to the marriage officer that the woman about to be married is a British subject, and that the man is an alien, he must be satisfied that the marriage will be recognized by the law of the foreign country to which the alien belongs.

6. The following modifications of the requirements of the Foreign Marriage Act as to residence and notice which appear to Her Majesty to be consistent with the observance of due precautions against the solemnization of clandestine marriages, shall have effect in cases where one only of the parties has dwelt within the district of the marriage officer:—

(1.) A marriage may be solemnized under the Foreign Marriage Act in the official house of a marriage officer in whose district one of the parties has dwelt—

(a) If the marriage officer is satisfied that such notice as is mentioned below in sub-articles (3) and (4) of this article, has been given of the intended marriage in the place where the other party has dwelt; or

(b) If a Secretary of State is satisfied that the intended marriage is not clandestine, and that adequate notice has been given, and gives permission for the same to be solemnized.

(2.) In either case the oath, affirmation, or declaration under section 7 of the Foreign Marriage Act shall, in addition to the matters specified in subsection (a) and (c) of that section, state that one of the parties has for three weeks immediately preceding had his or her usual place of abode within the district of the marriage officer, and further state the place where the party who has not dwelt within that district has, within three months immediately preceding, had for three consecutive weeks his or her usual place of abode, and the notice which has been given in that place during those three weeks.

(3.) The notice to be given where the marriage is not solemnized with the special permission of a Secretary of State shall, if the party has dwelt in a foreign country, be given, entered, and posted up in the manner and during the period provided by the Foreign Marriage Act, in like manner as if the marriage were to be solemnized by or before a marriage officer in that country, and the marriage officer to whom the notice is given in that country shall, on payment of the proper fee, give a certificate that the notice has been so given and posted up, and that he is unaware of any impediment which should obstruct the solemnization of the marriage.

(4.) If the party dwells in a place in the United Kingdom, the notice shall be given in the like manner and on payment of the like fee as if that party were about to be married in that place, and in England or Ireland shall be given to the superintendent registrar or registrar, and in Scotland shall be given by proclamation of banns; and the superintendent registrar or registrar shall deal with the notice and give a certificate for marriage in like manner and on payment of the like fee as in the case of a marriage in his district: and the session clerk of the parish in which the banns were proclaimed in Scotland shall, in like manner and on payment of the like fee as in the case of a marriage in his district, give a certificate of proclamation of such banns.

Consular Marriages.

7. For the purpose of marriages to be solemnized by or before a marriage officer who is also a consul as defined by the Foreign Marriage Act, every place within the curtilage or precincts of the house in which the consul is for the time being resident, or of the building which is for the time being used for the purpose of his office, shall be part of the official house of such marriage officer, and every place to which the public have ordinary access in such official house shall be deemed to be part of the office of such marriage officer.

Registration of Marriages by Foreign Law.

8.—(1.) A consular officer shall not be required to attend at the solemnization of a marriage solemnized in accordance with the local law unless the marriage is solemnized at the place where he is appointed to reside, nor unless the proper fee has been previously paid to him.

(2.) The consular officer shall forthwith, after the solemnization of the marriage, register the marriage in duplicate in books furnished to him by the Registrar-General through a Secretary of State for the purpose, separate from any register books provided for marriages solemnized by him, and shall register the same in accordance with section 9 of the Foreign Marriage Act, save that if the person by whom the marriage has been solemnized declines to sign the same, the consular officer shall enter the name of that person, and the fact that he declines to sign the same.

(3.) The consular officer shall transmit copies and the certificate and the book when filled in manner provided by section 10 of the Foreign Marriage Act.

(4.) Nothing in this Order shall authorise any officer who is not a consular officer to register a marriage solemnized in accordance with the local law.

(5.) The expression “consular officer” includes a consul-general, consul, vice-consul, pro-consul, consular agent, and any person for the time being authorised to discharge the duties of consul-general, consul, vice-consul, or consular agent.

High Commissioners, &c.

9.—(1.) A Secretary of State, by a written authority under section 11 of the Foreign Marriage Act, may authorise a person to act in the place of a High Commissioner or Resident mentioned in that section, outside of Her Majesty's dominions.

(2.) If a Secretary of State gives such authority, or, in pursuance of the said section, authorises any High Commissioner, Resident, or other officer outside Her Majesty's dominions, not being an ambassador or a consul, to be a marriage officer, then, for the purpose of marriages solemnized and registered by or before any High Commissioner, Resident, or officer, or person so authorised, expressions in the Foreign Marriage Act shall be construed as follows:—

- (a) Expressions referring to the district of a marriage officer shall be construed to refer to the district for which such High Commissioner, Resident, or officer, or person is authorised to act for the purpose of the Foreign Marriage Act;
- (b) The expression “official house of a marriage officer” shall be construed to refer to the building or part of a building or place specified in the document by which he is authorised to act;
- (c) The expression “office,” when used with respect to the place at which any act or thing shall or may be done, shall be construed to refer to such portion of the building, part, or place so specified as is ordinarily accessible to the public.

Her Majesty's Ships.

10.—(1.) Marriages, under the Foreign Marriage Act, on board one of Her Majesty's vessels may be solemnized by or before a commanding officer of such rank and of such vessel as is for the time being authorised for that purpose by or in pursuance of any Admiralty instructions, and for the purpose of any such marriages a commanding officer so authorised shall, without any written warrant, be a marriage officer, and, for the purpose of such marriages, expressions in the Foreign Marriage Act shall be construed as follows:—

- (a) Expressions referring to the district of a marriage officer shall be construed to refer to such parts of the foreign station to which the commanding officer is attached as may be specified in that behalf by the Admiralty instructions;
- (b) The expression “official house of a marriage officer” shall be construed to refer to the vessel of the said commanding officer;

- (c) The expression "office," when used with respect to the place where any act or thing shall or may be done, shall be construed to refer to the part of the ship on which public notices are affixed.

(2.) The commanding officer before he solemnizes a marriage, shall be satisfied that, at the port or place where the marriage is solemnized, sufficient facilities do not exist for the solemnization of the marriage on land, either in accordance with the local law of the country or in accordance with the Foreign Marriage Act.

(3.) The requirements of the Foreign Marriage Act as to residence and notice shall be modified as follows, namely, not less than three weeks' notice of the intended marriage must have been given in such public manner, or to such relatives or friends of the parties, as satisfies the commanding officer that as much notice of the intended marriage has been given as would be given if the marriage took place in England, and that the marriage is not clandestine.

11. The forms in the schedule to this Order, or forms to the like effect, shall be used in all cases to which they are applicable.

Definitions, &c.

12. In this Order the expression “ ambassador ” includes minister and chargé d'affaires, and references to the embassy or embassy house shall be construed accordingly.

Other expressions have the same meaning as in the Foreign Marriage Act.

13. This Order shall come into operation on the first day of January, one thousand eight hundred and ninety-three, and from and after that day the Order in Council made on the twenty-fourth November, one thousand eight hundred and ninety-one, with respect to foreign marriages shall be repealed.

14. This Order may be cited as the Foreign Marriages Order in Council, 1892.

SCHEDULE.

FORMS.

No. 1.—*Notice of Marriage.*

To the [British Consul-General *or* Consul] at

I hereby give you notice that a marriage is intended to be had within three calendar months from the date hereof between me and the other party herein named and described (that is to say):—

Name and Surname.	Condition.	Rank or Profession.	Age.	Residence.	Length of Residence.
A. B.....	Bachelor ....	.....	Of full age.....		
C. D.....	Spinster .....	.....	Minor		

Witness my hand, this

day of

(Signed)

A. B., *or*
C. D.

No. 2.—*Form of Oath.*

I, A. B., of _____, make oath and say as follows:—

1. A marriage is proposed to be solemnized between me and C. D.
2. I believe that there is not any impediment in kindred or alliance, or other lawful hindrance to the above marriage.

3. Both I and C. D. have for three weeks immediately preceding this date had our usual place of abode within the district of [*here insert the official title of the marriage officer, and in the case of a consul, the place where he is appointed to reside*], that is to say, I, at _____ and C. D. at _____.

4. Neither I nor C.D. is under the age of 21 years; _____ [or, as the case may be, I am under the age of 21 years, but I am the widow of _____, who died on the _____ day of _____, 18 ____] [or I am under the age of 21 years, and the consent of G.H., whose consent is required to my marriage, is given as shown by the writing under his hand now shown to me and marked _____.]

NOTE.—Where the requirements of the Foreign Marriage Act as to residence have been dispensed with, the form of paragraph 3 of the oath by A.B. will be as follows:—

I have for three weeks immediately preceding this date had my usual place of abode within the district of [*here insert the official title of the marriage officer, and, in the case of a consul, the place where he is appointed to reside*], namely, at _____, and to the best of my knowledge and belief C.D. has, within three months immediately preceding this date, namely, for three consecutive weeks from the _____ day of _____ to the _____ day of _____, had his [or her] usual place of abode at _____, and notice of our intended marriage has been given there during those weeks by _____, as appears by the certificate now shown to me and marked _____.

And the form of paragraph 3 of the oath by C.D. will be as follows:—

I have within three weeks immediately preceding this date, namely, for three consecutive weeks from the _____ day of _____ to the _____ day of _____, had my usual place of abode at _____, and notice of our intended marriage was given there during those weeks by _____, as appears by the certificate now shown to me and marked _____, and to the best of my knowledge and belief A.B. has for three weeks immediately preceding this date had her [or his] usual place of abode within the district of [*here insert the official title of the marriage officer, and, in the case of a consul, the place where he is appointed to reside*].

Where a Secretary of State has been satisfied that adequate notice has been given, and gives permission for the solemnization of the marriage, the form of so much of paragraph 3 of the oath as relates to the notice of the intended marriage will be as follows:—

A notice of our intended marriage has been given by [*here state what notice has been given*], as appears by the certificate [*or other evidence of the notice*] now shown to me and marked _____, and a Secretary of State has been satisfied that such notice is adequate and has given permission for the marriage to be solemnized.

N.B.—Any person entitled, under 51 & 52 Vict. c. 46 (the Oaths Act, 1888), or otherwise, to affirm or declare, may make an affirmation or declaration in lieu of an oath.

No. 3.—*Form of Certificate of Notice.*

I, A.B., British consul [*or as the case may be*], of _____, hereby certify that on the _____ day of _____, 18 ____, I received the following notice of marriage [*here insert the words of the notice*], and that such notice was entered and was posted up in my Consulate in the manner and during the period provided by the Foreign Marriage Act, 1892, as if the marriage was to be solemnized in my Consulate, and that I am not aware of any impediment which would obstruct the solemnization of the above marriage.

No. 4.—*Certificate of Copy of Register.*

I, _____, [consul, or, as the case may be], residing at _____, do hereby certify that this is a true copy of the entries of marriages registered in my office, from the entry of the marriage of A.B. and C.D., number one, to the entry of the marriage of R.S. and T.V., number fourteen.

Witness my hand and seal, this _____ day of _____, 19 ____.

(Signature and official seal of the marriage officer.)

THE FOREIGN MARRIAGES ORDER IN COUNCIL, 1895.

(Stat. R. and O. 1895 (No. 375).)

At the Court at Windsor, the 29th day of June, 1895.

Present :

The Queen's Most Excellent Majesty.

His Royal Highness the Duke of Connaught and Strathearne.

Lord Chancellor.

Mr. Secretary Asquith.

Lord Privy Seal.

Mr. Secretary Campbell-Bannerman.

Marquess of Ripon.

Sir William Vernon Harcourt.

Earl of Kimberley.

Sir George Trevelyan, Bart.

Lord Leigh.

Sir Henry Brougham Loch.

Whereas by the Foreign Marriage Act, 1892, Her Majesty the Queen in Council is authorised to make regulations for the purposes therein specified :

Now, therefore, Her Majesty, by virtue and in exercise of the powers conferred by the said Act or otherwise enabling her in this behalf, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows:—

1. A British consul, or person authorised to act as British consul, shall not, under the provisions of section 18 of the Foreign Marriage Act, 1892, or Article 8 of the Foreign Marriages Order in Council, 1892, register any marriages solemnized in accordance with the local law of a foreign country, unless he is a marriage officer, or is, for the time being, authorised by a Secretary of State to register such marriages; and no consular officer shall be required to attend at the solemnization of any marriage so solemnized unless he is by, or in pursuance of, this Order authorised to register such marriage.

2. This Order may be cited as "The Foreign Marriages Order in Council, 1895."

And one of Her Majesty's Principal Secretaries of State is to give the necessary directions therein.

C. L. PEEL.

THE FOREIGN MARRIAGES ORDER IN COUNCIL, 1903.

(Stat. R. and O. 1903 (No. 215).)

At the Court at Buckingham Palace, the 12th day of March, 1903.

Present :

The King's Most Excellent Majesty in Council.

Whereas by the Foreign Marriage Act, 1892 (c), it is provided (section 1) that all marriages between parties of whom one at least is a British subject solemnized in the manner in that Act provided in any foreign country or place, by or before a marriage officer within the meaning of that Act, shall be as valid in law as if the same had been solemnized in the United Kingdom with a due observance of all forms required by law;

And whereas the said Act also provides (section 2) that in every case of a marriage intended to be solemnized under that Act, one of the parties intending marriage shall give such notice as is therein mentioned to the marriage officer within whose district both of the parties have had their residence not less than one week then next preceding; but the said Act makes no provision for cases where one only of the parties has had such residence;

(c) *Ante*, p. 119.

And whereas the said Act (section 21) authorised Her Majesty the Queen in Council to make Regulations for (amongst other purposes) modifying in special cases or classes of cases the requirements of that Act as to residence and notice, so far as such modification should appear to Her Majesty to be consistent with the observance of due precautions against clandestine marriages ;

And whereas [*recital of sect. 6 of the Order of 1892, ante, p. 127*].

And whereas it is expedient that further modifications of the requirements of the said Act as to residence and notice should have effect in cases where one only of the parties has dwelt within the district of the marriage officer and the other has dwelt in a colony or in India :

Now, therefore, His Majesty, by virtue and in exercise of the powers enabling him in this behalf, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, as follows :—

1. The following further modifications of the requirements of the Foreign Marriage Act, 1892, as to residence and notice which appear to His Majesty to be consistent with the observance of due precautions against the solemnization of clandestine marriages, shall have effect in cases where one only of the parties has dwelt within the district of the marriage officer and the other of such parties has dwelt in a colony or in India, that is to say :

- (1.) If the marriage officer is satisfied that such notice has been given by the party dwelling in such colony or in India as may be provided by any law of that colony or of the Governor-General of India in Council (as the case may be) giving effect to this Order.
- (2.) In any such case the oath, affirmation, or declaration required by section 7 of the Foreign Marriage Act shall be made subject to the modifications thereof, to which effect is given by Article 6 of the Foreign Marriages Order in Council, 1892 (*ante, p. 127*).

2. A law (*d*) enacted by the legislature of a colony or by the Governor-General of India in Council shall be deemed to give effect to this Order if it makes provision (in whatever terms expressed) as follows :—

- (1.) That a notice of a marriage intended to be solemnized under the Foreign Marriage Act may be given by one of the parties intending such marriage who has had his or her usual place of abode for three consecutive weeks immediately preceding in some place in that colony or in India (as the case may be) to such marriage registrar or other officer as may be designated by the law in this behalf ;
- (2.) That such notice shall be published either by proclamation of banns or in such other manner as the law may provide ; and
- (3.) That such marriage registrar or other officer, unless he is aware of any impediment or objection which should obstruct the solemnization of the marriage, shall, on payment of such fee, if any, as the law may provide, give a certificate that the said notice has been so given and published as aforesaid.

3. In this Order “colony” and “India” have the same respective meanings as are given to these expressions by section 18 of the Interpretation Act, 1889.

4. This Order may be cited as “The Foreign Marriages Order in Council, 1903 ;” and the Foreign Marriages Order in Council, 1892, and this Order may be cited together as “The Foreign Marriages Orders in Council, 1892 and 1903.”

And the Right Honourable Joseph Chamberlain and the Right Honourable Lord George Hamilton, two of His Majesty’s principal Secretaries of State, are to give the necessary directions herein as to them may respectively appertain.

A. W. FITZROY.

(*d*) As to such laws, see the list, *post*, p. 133, and the Colonial titles, *post*.

Legislation for giving effect to this Order has been passed in the following British possessions :—

Bahamas (1904, No. 5).	India (Act XIV. of 1903).
Barbados (1904, No. 41).	Newfoundland (Act No. 9 of 1904).
British Guiana (1903, No. 36).	St. Lucia (1904, No. 4).
British Honduras (1903, No. 14).	St. Vincent (1904, No. 4).
Fiji (1904, No. 4).	Seychelles (1904, No. 7).
Gambia (Ord. No. 8 of 1904).	Trinidad and Tobago (Revised Ordinances (ed. 1905), Ord. No. 299, which takes the place of Ord. No. 24 of 1904).
Gibraltar (Ord. No. 2 of 1903).	
Gold Coast (Ord. No. 6 of 1903).	
Grenada (1903, No. 8).	
Hong Kong (Ord. No. 6 of 1903).	

THE MARRIAGE ACT, 1898.

61 & 62 VICT. c. 58.

An Act to amend the Law relating to the Attendance of Registrars at Marriages in Nonconformist Places of Worship. [12th August, 1898.]

1.—(1.) This Act may be cited as the Marriage Act, 1898, and may be cited with the Marriage Acts, 1811 to 1886. Short title and construction.

(2.) The term “registered building,” wherever used in this Act, shall mean any building registered for solemnizing marriages therein under the Marriage Act, 1836^(e).

(3.) For the purposes of this Act, as applied to Roman Catholic registered buildings, the words “trustees or governing body” shall include the bishop or vicar general of the diocese.

2. This Act shall not extend to Scotland or Ireland.

3. This Act shall come into operation on the first day of April one thousand eight hundred and ninety-nine. Extent of Act.

4. Notwithstanding anything contained in section twenty of the Marriage Act, 1836^(f), marriages may be lawfully solemnized in the registered building named in the notice of the marriages and in the superintendent registrar's certificate or certificate and licence issued pursuant to the provisions of the said Act, or any Act amending the same, between and by the parties described in the notice and certificate or certificate and licence, according to such form and ceremony as they may see fit to adopt, without the presence of any registrar, but in the presence of such duly authorised person as hereinafter mentioned, and subject in all other respects, excepting as is herein provided, to all the conditions and provisos contained in the said Act and any Acts amending the same. Commencement of Act. Solemnization of marriages without presence of registrar.

5.—(1.) Whenever a marriage is intended to be solemnized in a registered building, and the parties intending to contract the marriage have duly fulfilled all the conditions from time to time required by law to entitle the superintendent registrar to issue a certificate or certificate and licence authorising the marriage, and the superintendent registrar does not receive notice, at the time when the form of notice of marriage as required by law is given to him, that the parties intending to contract the marriage require a registrar to be present at the marriage, the superintendent registrar shall, subject to the provisions of this Act, issue under his hand to one of those parties a certificate, or certificate and licence, as the case may require, in accordance with the forms set forth in Schedules B. and C. annexed to the Marriage and Registration Act, 1856^(g). Notices and forms.

(2.) The superintendent registrar shall at the same time give to one of the parties intending to contract the marriage printed instructions in the prescribed form for the due solemnization of the marriage.

^(e) 6 & 7 Will. 4, c. 85, ss. 18, 19, *ante*, pp. 84, 85.

^(f) *Ante*, p. 85.

^(g) 19 & 20 Vict. c. 119, *ante*, p. 104.

Declarations
to be made
in presence
of authorised
person.

6.—(1.) Where a marriage is solemnized under this Act each of the parties contracting the marriage shall in some part of the ceremony make the following declarations:—

“I do solemnly declare that I know not of any lawful impediment why I, A.B., may not be joined in matrimony to C.D.”

And each of the parties shall say to the other the words following:—

“I call upon these persons here present to witness that I, A.B., do take thee, C.D., to be my lawful wedded wife [or husband],” or in lieu thereof the words following:—

“I, A.B., do take thee, C.D., to be my wedded wife [or husband].”

(2.) The aforesaid declarations shall be made in the presence of the authorised person hereinafter mentioned and two or more witnesses.

(3.) No marriage under this Act shall be solemnized in any registered building except in the presence of a person (in this Act referred to as an authorised person) certified as having been duly authorised for the purpose by the trustees or other governing body of the building, or of some registered building in the same registration district.

(4.) Where a person has been so authorised in respect of any registered building, the trustees or governing body of that building shall, within the prescribed time and in the prescribed manner, certify the name and address of the person or persons authorised for that building to the Registrar-General and to the superintendent registrar of the district in which the building is situate.

Register
books and
returns.

7.—(1.) In the case of the solemnization of a marriage under this Act, the certificate or certificate and licence required by law shall be delivered to the authorised person in whose presence the marriage is solemnized, who shall, immediately after the marriage, register in duplicate in two of the marriage register books provided for the purpose, the several particulars relating to the marriage according to the form in Schedule C. annexed to the Births and Deaths Registration Act, 1836 (*h*), and every such entry shall be signed by the authorised person, and by the parties to the marriage, and by two witnesses; and all such entries shall be made in consecutive order from the beginning to the end of each book, and the numbers of the place of entry of each duplicate marriage register book shall be the same.

(2.) The Registrar-General shall, when so requested by the authorised person, or the trustees or governing body of any registered building in which marriages may be solemnized under this Act, supply a sufficient number, in duplicate, of such marriage register books and forms for certified copies thereof as may be required for the purposes of this Act.

(3.) A marriage under this Act shall not be solemnized in any registered building until duplicate register books have been so supplied.

(4.) If the Registrar-General is not satisfied with respect to any building registered, or proposed to be registered, for the solemnization of marriages therein, that sufficient security exists for the due registration of marriages under this Act, and for the safe custody of marriage register books, he may in his discretion attach to the continuance on the register or registration of the building a condition that no marriages under this Act shall be solemnized therein.

(5.) Section 35 of the Births and Deaths Registration Act, 1836 (*i*), shall apply in the case of a person having the custody of a marriage register book under rules made in pursuance of this Act, in like manner as it applies in the case of a rector, vicar, or curate.

Custody of
certificate
and licence.
Fees.

8. The certificate or certificate and licence, as the case may be, shall be kept in the prescribed custody, and shall be produced with the marriage register books as and when required by the Registrar-General.

9. The fees payable to the superintendent registrars under the Marriage Act, 1836 (*k*), and the Marriage and Registration Act, 1856 (*l*), in respect of marriages, whether with or without licence, shall be payable in respect of marriages under this Act.

(*h*) *Ante*, p. 93.

(*i*) 6 & 7 Will. 4, c. 86, *ante*, p. 90.

(*k*) See *ante*, p. 81.

(*l*) *Ante*, p. 104.

10. Where the contracting parties give notice to the superintendent registrar that it is the wish of the parties to be married in the presence of the district registrar, nothing in this Act contained shall relieve the registrar from attendance at such marriage as now by law required and the fulfilment of the duties now imposed by law, and in case of such attendance the registrar shall be entitled to the fees now authorised by law. Saving for right to require attendance of registrar.

11.—(1.) The authorised person for a registered building shall, in the months of April, July, October, and January respectively, make and deliver to the superintendent registrar of the district in which the registered building is situate, on forms supplied by the Registrar-General, a true copy certified by him under his hand of all the entries of marriages in the register book since the date of the last certified copy, and if there has been no marriage registered in the book since that date, shall certify the fact under his hand on a form to be supplied by the Registrar-General, and shall in accordance with rules under this Act keep the marriage register books safely until they are filled. Provisions as to registers and certified copies.

(2.) The superintendent registrar shall pay, or cause to be paid, to the authorised person the sum of sixpence for every entry contained in the said certified copy, and this sum shall be reimbursed to the superintendent registrar by the board of guardians of the union for which he is appointed.

(3.) When any such register book is filled, one copy thereof shall be delivered to the superintendent registrar of the district in which the registered building is situate, and the other shall be kept in the prescribed custody.

(4.) Section 29 of the Births and Deaths Registration Act, 1837 (*ll*), shall apply in the case of an authorised person in like manner as it applies in the case of a rector, vicar, or curate. 7 Will 4 & 1 Vict. c. 22.

(5.) Every superintendent registrar shall four times in every year send to the Registrar-General the certified copies received by him under this section in the same manner and under the same conditions as are directed with respect to the certified copies of marriages solemnized in churches and chapels under the Births and Deaths Registration Act, 1836 (*m*).

12. If any authorised person refuses or fails to comply with this Act, or the enactments or regulations for the time being in force with respect to the solemnization and registration of marriages, he shall be guilty of an offence under this Act, and shall be liable, on summary conviction, to a penalty not exceeding ten pounds, or on conviction on indictment to imprisonment with or without hard labour for a term not exceeding two years or to a fine not exceeding fifty pounds, and shall, upon conviction, cease to be an authorised person. Offences.

13. Nothing in this Act shall be taken to relate or have any reference to marriages solemnized in accordance with the practice and usages of the Society of Friends or of persons professing the Jewish religion. Saving for Society of Friends and Jews.

14. Section twenty-three of the Births and Deaths Registration Act, 1837 (*n*), relating to marriages in the Welsh tongue, shall apply in the case of marriages under this Act. Provisions for marriage in the Welsh tongue.

15. So much of sections thirty-nine (*o*) and forty-two (*p*) of the Marriage Act, 1836, as punishes the solemnization of or renders void any marriage by reason of the absence of the registrar is hereby repealed in respect of any marriage authorised by and solemnized in accordance with this Act. Repeal.

16. The Registrar-General may, with the approval of the Local Government Board, make rules with respect to— Rules.

- (a) The forms to be used for the purposes of this Act ;
 - (b) The custody of documents required for the purposes of this Act ;
 - (c) The duties of registrars, superintendent registrars, and authorised persons under this Act ;
 - (d) Any matter which may under this Act be prescribed ;
- and generally for carrying into effect the provisions of this Act.

(*ll*) *Ante*, p. 95.

(*m*) *Ante*, p. 90.

(*n*) *Ante*, p. 94.

(*o*) *Ante*, p. 88.

(*p*) *Ante*, p. 89.

Temporary provision as to fees.

17 (g).—(1) On the issue of any certificate for a marriage to be solemnized in accordance with this Act, the parties to the marriage shall pay to the superintendent registrar of the district in which the registered building selected for the marriage is situate, an additional fee of six shillings and sixpence if the marriage is by licence, and otherwise a fee of four shillings. Provided that not more than one such fee shall be paid in respect of any one marriage.

(2) Where there is only one registrar of marriages for the district, who was appointed before the passing of this Act, the superintendent registrar shall, at the end of each quarter, pay the fees so received by him to that registrar, and where there are more such registrars he shall, at the end of each quarter, divide the amount of the fees so received by him among those registrars in accordance with rules to be made under this Act.

(3) This section shall not continue in force for more than ten years from the commencement of this Act, and shall not apply to a district unless there is acting therein a registrar of marriages appointed before the passing of this Act.

RULES AND REGULATIONS PRESCRIBED UNDER THE MARRIAGE ACT, 1898 (61 & 62 VICT. C. 58), FOR THE GUIDANCE OF AUTHORISED PERSONS AND OF THE TRUSTEES OR GOVERNING BODIES OF REGISTERED BUILDINGS IN WHICH MARRIAGES MAY BE SOLEMNIZED WITHOUT THE PRESENCE OF A REGISTRAR. MADE BY THE REGISTRAR-GENERAL FEBRUARY 21, 1899, AND APPROVED BY THE LOCAL GOVERNMENT BOARD FEBRUARY 22, 1899.

(Stat. R. and O. 1899 (No. 77).)

1. *The Registered Building.*

61 & 62 Vict. c. 58, s. 7 (4). No registered building can be used for the purposes of the Marriage Act, 1898, unless the Registrar-General is satisfied that sufficient security exists (1) for the due registration of marriages, and (2) for the safe custody of marriage register books; nor until an authorised person has been duly certified by the trustees or governing body to the Registrar-General and to the superintendent registrar of the district in which such registered building is situate; nor until duplicate marriage register books have been supplied by the Registrar-General.

Ibid., s. 6 (3, 4).

Ibid., s. 7 (3).

Ibid., s. 11.

The trustees or governing body of a registered building authorised to be used for the purposes of the Marriage Act, 1898, must provide a fireproof iron safe, which must be kept in a dry and secure place within such building; and the duplicate register books and forms for certified copies must be kept locked up in such safe when not actually in use, and the key thereof must be kept by the authorised person for the building, in his own possession. If the key of the safe be lost or broken, or the lock be out of repair, the trustees or the authorised person must at their or his expense have the loss or defect made good.

18 & 19 Vict. c. 81.

61 & 62 Vict. c. 58, s. 7 (4).

Whenever a registered building which has been used for the purposes of this Act is removed from the Registrar-General's official list of registered buildings, in accordance with the provisions of the Registration Acts, or if at any time the Registrar-General shall in his discretion attach to the continuance of a building upon his official register a condition that marriages under this Act shall cease to be solemnized therein, the trustees or governing body will be instructed by the Registrar-General as to the disposal of the register books and other official documents relating to such building.

2. *The Authorised Person.*

61 & 62 Vict. c. 58, ss. 6 (3) and 7 (3).

No marriage can take place under the Marriage Act, 1898, in any registered building, except in the presence of a person who has been duly certified to the Registrar-General as having been authorised for the purpose by the trustees or

(g) This section expired on 31st March, 1909.

governing body of that registered building or of some other registered building sanctioned for use under the Act in the same registration district; nor until duplicate marriage registers have been supplied by the Registrar-General.

When it is desired to certify to the Registrar-General the appointment of an authorised person to act for any registered building, the trustees or governing body thereof must apply to the Registrar-General for the proper forms to be used for that purpose. These appointment forms will be issued in triplicate; the information as to the name and postal address of the person proposed must be filled up on each of the forms, which must then be signed by the trustees or governing body and be forwarded within a week to the Registrar-General, who will send one to the superintendent registrar and one to the authorised person, the remaining form being filed in the General Register Office. 61 & 62 Viet.
c. 58, s. 6 (4).

Should the trustees or governing body appoint more than one authorised person for the same building, they must, when sending such appointment to the Registrar-General, notify which of such authorised persons is to be held responsible for carrying out the provisions of section 11 of the Marriage Act, 1898, and for discharging the other duties contingent thereon.

The superintendent registrar must enter in a book with which he will be supplied by the Registrar-General the names and addresses of all authorised persons within his district, and the names of the registered buildings for which they are authorised to act.

A person duly authorised to act for one registered building in a registration district may officiate at any other sanctioned registered building within the same district, but he cannot act in a registered building which is situate in another registration district. 61 & 62 Viet.
c. 58, s. 6 (3).

Whenever an authorised person for a registered building officiates at a marriage in another building in the same registration district, he must make arrangements with the authorised person for the building in which the marriage is to be solemnized, to have access to the marriage register books belonging to that building, as none but such books may be used for a marriage therein which is solemnized under the provisions of the Marriage Act, 1898. The marriage register books belonging to one registered building must under no circumstances be used for a marriage in any other building.

If a registrar of marriages should be required to attend a marriage in a building for which an authorised person has been appointed, such marriage must not be recorded in the registers supplied to such authorised person, but the registrar of marriages must register it in his own register book in accordance with his regulations.

Whenever an authorised person changes his address his new address should be at once communicated to the Registrar-General and to the superintendent registrar of the district in which the building for which he is authorised is situated.

On the death, retirement, removal to another district, or deposition from office of any authorised person, the trustees or governing body must at once inform the Registrar-General, in order that forms may be sent for the appointment of a successor; and they must at the same time state what arrangements will be made for marriages in the building pending the new appointment. The trustees or governing body will be held responsible for the safe custody of the registers and for compliance with the Act in all respects while a vacancy exists.

No authorised person must act until his appointment has been received and acknowledged by the Registrar-General.

An authorised person appointed and certified in succession to another, must obtain from his predecessor, or from the trustees or governing body, the key of the fireproof safe, and must see that the duplicate registers, certified copy forms, and book of regulations come into his possession. If anything is wanting he must at once report the fact to the Registrar-General.

Authorised persons should carefully study this book of regulations in which their duties and obligations are set forth: failure to do this may not only render them liable to the heavy penalties specified in section 12 of the Marriage Act,

1898, and also in the Marriage Acts, 1836 to 1886, but may lead to the illegal solemnization of marriages.

3. *Attending a Marriage.*

- When a marriage is appointed to take place in a registered building, the use of which for the purposes of the Marriage Act, 1898, has been officially sanctioned, an authorised person for such registered building, or one of the authorised persons for some other similarly sanctioned registered building
- 49 Vict. c. 14. within the same registration district, must attend at the time appointed, which must be between the hours of eight in the morning and three in the afternoon, with the duplicate register books belonging to the registered building in which the marriage is to be solemnized, for the purpose of registering such marriage.
- 61 & 62 Vict. c. 58, s. 7 (1). On meeting the parties at the appointed registered building, the authorised person must require that the certificate or certificates, or the licence and certificate, on the authority of which the marriage is to take place, be delivered to him.
- 6 & 7 Will. 4, c. 85, ss. 4 and 16. If the marriage is to be by certificate (without licence), and the parties reside in the same registration district, only one certificate is necessary; but if they reside in different districts, a certificate from the superintendent registrar of each district must be produced.
- 19 & 20 Vict. c. 119, ss. 6, 9. If the marriage is to be by licence, only one licence and one certificate are necessary, whether the parties reside in the same district or in different districts.
- 6 & 7 Will. 4, c. 85, s. 8. Certificates for marriage without licence are printed in black ink; certificates for marriage by licence are printed in red ink.
- Unless these indispensable documents be actually in the possession of the authorised person, he must not under any circumstances allow the marriage to proceed.
- For a marriage without licence the following are the legal forms of certificate issued, under the various conditions, for production to the authorised person officiating at the marriage, and upon which alone he may act:—
- 19 & 20 Vict. c. 119, s. 4. 1. A certificate issued by the superintendent registrar of the district in which the registered building selected for the marriage is situate, the residence of one or both of the parties being within such district.
 - Ibid.* 2. A certificate issued by the superintendent registrar of another district than that in which the registered building selected for the marriage is situate, when one of the parties resides in the former and one in the latter district.
 - 3 & 4 Vict. c. 72, s. 2. 3. A certificate issued by the superintendent registrar of another district than that in which the registered building is situate, to meet cases in which either one of the parties resides in a district wherein there is no registered building in which marriages are solemnized according to the rite, form, or ceremony which he or she desires to adopt: the marriage can then take place in that district containing such a registered building which is nearest to his or her residence.
 - 19 & 20 Vict. c. 119, s. 14. 4. A certificate issued by the superintendent registrar of another district than that in which the registered building is situate, to meet the case of parties who desire to be married in the usual place of worship of one or both of them, when such place of worship is not within the district or districts of residence of one or both of them, and is not more than two miles beyond the limits of the district in which notice of marriage is given.
 - 19 & 20 Vict. c. 119, s. 7. 5. A certificate of a registrar of marriages in Ireland, when one of the parties resides in Ireland and the other in England or Wales.
This certificate must be in printed form (in black ink) similar to the corresponding English certificate.
 - 19 & 20 Vict. c. 119, s. 8. 6. A certificate of proclamation of banns in Scotland, when one of the parties resides in Scotland and the other in England or Wales.
A certificate of publication of notice under the "Marriage Notice (Scotland) Act, 1878" (*post*, p. 187), must not be accepted.

For a marriage by licence the following are the legal forms of certificate and licence issued under the various conditions for production to the authorised person officiating at the marriage, and upon which alone he may act:—

1. A certificate and licence issued by the superintendent registrar of the district in which the registered building selected for the marriage is situate, the residence of one or both of the parties being within such district. 19 & 20 Vict. c. 119, ss. 6 and 9.
2. A certificate and licence issued by the superintendent registrar of another district than that in which the registered building selected for the marriage is situate, when one of the parties resides in the former and one in the latter district. *Ibid.*
3. A certificate and licence issued by the superintendent registrar of another district than that in which the registered building selected for the marriage is situate, when such building is the nearest to the residence of either one of the parties who may desire to be married according to rites or ceremonies used in that building. 3 & 4 Vict. c. 72, s. 2.
4. A certificate and licence issued by the superintendent registrar of another district than that in which the registered building selected for the marriage is situate, when such building is the usual place of worship of one or both of the parties to be married, and is not more than two miles beyond the limits of the district in which the notice was given. 19 & 20 Vict. c. 119, s. 14.

The authorised person must carefully examine such certificate and licence before he allows the marriage to proceed. He must see that in every certificate and licence, the registered building in which the parties are assembled, is specified as that in which the marriage is to be solemnized,—and that every certificate and licence has been duly signed by the superintendent registrar by whom it purports to have been issued. If the certificate or licence be defective in either of these particulars, the marriage must be postponed until the defect has been remedied or the omission supplied. Also, if the prescribed interval of twenty-one clear days in the case of a marriage by certificate, or of one clear day in the case of a marriage by licence, has not elapsed since the date of the entry of the notice, the marriage must be postponed. 6 & 7 Will. 4, c. 85, ss. 39 and 42.

Whenever a marriage shall not have been solemnized within three calendar months next after the day of the entry of the notice thereof in the marriage notice book, such notice, and the certificate and licence which may have been granted, and all other proceedings taken thereon, are utterly void. 6 & 7 Will. 4, c. 85, s. 15; 7 Will. 4 & 1 Vict. c. 22, s. 3.

If the notice shall have been entered in the marriage notice book on the last day of any month, the marriage may be solemnized on or before the last day of the third following month, but not at any subsequent date.

If the marriage be about to be solemnized, under the provisions of 3 & 4 Vict. c. 72, s. 2, in a registered building wherein marriage is solemnized according to the rite, form, or ceremony which the parties desire to adopt, such building being out of the district or districts of residence, the memorandum on the back of the certificate or licence should have been filled up and signed.

If the marriage be about to be solemnized in the usual place of worship of the parties or one of them, under the provisions of 19 & 20 Vict. c. 119, s. 14, such place of worship being out of the district or districts of residence, the following words should appear in the seventh column of the certificate:—

“Such building being the usual place of worship of the said _____, and situate not more than two miles beyond the limits of the district of _____” [*naming the party or parties and the district in which the party or parties resides or reside*].

If, however, that memorandum have not been filled up and signed, or if the words “Such building,” &c., &c., have not been inserted, the authorised person may, on satisfactory explanation of the facts of the case, allow the marriage to proceed, taking care to have the omission subsequently supplied, without delay, by the superintendent registrar.

The authorised person must ascertain, by personal inquiry of the parties, whether their Christian names, surnames, and condition are completely and

correctly described in the certificate and licence; and if he find that such is not the case, he must act in accordance with the next following instructions:—

- (a) If the Christian name or surname be entirely different from that which appears in the certificate, the marriage must be stopped and the parties must be referred to the superintendent registrar by whom the certificate was issued.
- (b) If either the man or the woman has adopted or is commonly known by a Christian name or surname other than his or her true name or surname, the marriage should not be stopped; but both names or surnames should be recorded in the register book, as hereinafter prescribed.
- (c) Should the authorised person discover that the parties who are about to be married are within the prohibited degrees of kindred or affinity (*r*), he must not allow the marriage to proceed.
- (d) As regards lesser discrepancies arising from ignorance, inadvertence, variation in spelling, or other causes which may be consistent with honesty of purpose, the authorised person may, if he is satisfied that there has been no attempt at concealment of identity or any other fraudulent intention, allow the marriage to proceed.

4. Solemnization of a Marriage.

A marriage in a registered building, under the Marriage Act, 1898, must be solemnized with open doors (*i.e.*, doors not so closed as to prevent persons from entering), between the hours of eight in the morning and three in the afternoon, in the presence of an authorised person for that building or for some other registered building in the same registration district, and of two or more credible witnesses.

In some part of the ceremony each of the parties must, in the presence of the authorised person and the witnesses, declare as follows:—

“I do solemnly declare that I know not of any lawful impediment why I [*naming himself or herself*] may not be joined in matrimony to [*naming the other party*].”

And each of the parties must also say to the other—

“I call upon these persons here present to witness that I [*naming himself or herself*] do take thee [*naming the other party*] to be my lawful wedded [*wife or husband*];” or in lieu thereof—“I, A.B., do take thee, C.D., to be my wedded [*wife or husband*].”

If one or both of the parties be Welsh, and be unable to speak English, the following authorised Welsh translation of the declaration and form of contracting words, as set forth in an Order issued by the Registrar-General on 1st January, 1838, may be used:—

Translation of the Solemn Declaration.

I do solemnly declare that I know not of any lawful impediment why I, A.B., may not be joined in matrimony to C.D.

Yr wyf fi yn ddifrifol yn hysbysu na wn i am un rhwystr cyfreithlawn, fel nad ellir fy nghysylltu i, A.B., mewn priodas a C.D.

Translation of the Contracting Words.

I call upon these persons here present to witness that I, A.B., do take thee, C.D., to be my lawful wedded wife [*or husband*].

Yr wyf fi yn galw ar y personau sydd yma yn bresennol i dystiolaethu fy mod i, A.B., yn dy gymmeryd di, C.D., yn wraig briod cyfreithlawn (neu yn wr priod cyfreithlawn) i mi.

(*r*) See *ante*, p. 14.

Or in lieu thereof:—

<p>I, A.B., do take thee, C.D., to be my wedded wife [<i>or husband</i>].-</p>	<p>Yr wyf fi, A.B., yn dy gymmeryd di, C.D., yn wraig briod (neu yn wr priod) i mi.</p>
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The authorised person must recite the declaration and the form of contracting words, in order that the parties may repeat them; or they may be recited by any minister officiating at the marriage in conjunction with the authorised person.

In the case of a marriage solemnized in a registered building of the Roman Catholic Church, the declaration and the form of contracting words may be repeated in the sacristy or vestry, if the same be desired, provided that such sacristy or vestry be a part of the registered building, and that the authorised person and the witnesses be present when they are repeated.

If this solemn declaration and form of contracting words, or either of them, be omitted from the ceremony it will not be a marriage; and no ceremony must be registered as a marriage in which such declaration and words have been omitted.

As soon as the declaration and contracting words have been spoken by both parties they are man and wife; the marriage is complete and must forthwith be registered.

5. *Registration of Marriages.*

A marriage having taken place at which an authorised person has been officially present, such authorised person must, immediately after the marriage, and in some part of the building in which it occurred, register such marriage in the duplicate register books furnished for the use of that building by the Registrar-General, in the presence of the parties married and the witnesses. 61 & 62 Viet.
c. 58, s. 7 (1).

The authorised person is empowered to ask of the parties all the particulars required to be registered touching the marriage. 6 & 7 Will. 4,
c. 85, s. 36.

On commencing a new register book, the authorised person must insert, in the blank spaces on the title page, the names of the registered building, of the registration district, and of the county or counties.

It is most important that the ink used in registering marriages should be of a good black colour, and of permanent quality.

No entry in a register book should under any circumstances be commenced until after the marriage is legally complete.

All entries in a register book must be made strictly in progressive order according to the dates of registration; each entry being made in the space next following that in which the last entry was made. Under no circumstances whatever should any numbered space be left blank in a register book between the last entry made therein and the entry next to be made; and to guard against this the authorised person should, before commencing an entry on a new page, carefully note that the number of the space in which he is about to register a marriage is the number immediately following that in which the last entry was made. 6 & 7 Will. 4,
c. 85, s. 23;
61 & 62 Viet.
c. 58, s. 7 (1).

All the particulars recorded in a register book of marriages, except the signatures of the parties and witnesses, must be written by the authorised person. No one else is authorised to make an entry in a register book of marriage kept in pursuance of the Marriage Act, 1898, or to insert any of the particulars therein on behalf of the authorised person.

The particulars which should be recorded in any one column of an entry should not be extended into an adjoining column.

All particulars recorded by the authorised persons must be written in full; no abbreviations being allowed. Persons signing may, however, write their names in their usual manner.

The writing should be distinct and bold, and without flourishes. All Christian names and surnames, especially, should be written so distinctly in every letter that they may not be mistaken for any other Christian names or surnames.

On beginning to register a marriage, the blanks in the heading of the entry must be filled up so as to show the registered name(s) of the building, and the registration district and county in which it is situate, thus:—

“1899. Marriage solemnized at the Wesleyan Chapel, Vauxhall Walk, in the district of Lambeth, in the county of London.”

Column 1, headed “When Married.” In this column must be inserted, first, the day of the month in words, then the name of the month, and then the year in figures.

Column 2, headed “Name and Surname.” In this column the Christian name or names and the surname, first of the man married, and then of the woman, must be inserted.

If either of the parties has adopted or is commonly known by a Christian name or surname other than his or her true name or surname, both names or surnames should be recorded in the register book with the word “otherwise” between them, thus:—“Wilson, otherwise Overton.”

If the Christian name or surname of either of the parties, as ascertained at the time of marriage, does not precisely correspond with the name or surname as stated in the certificate issued for the marriage, the authorised person should endorse on the certificate the precise nature of the discrepancy and a brief statement of the explanation given by the parties, and should then insert the correct name or surname in the register book.

In the case of a divorced woman, her Christian name or names and surname must be entered thus:—“Ann Meredith, formerly Brown (spinster)” [*or “widow,” as the case may be*].

If the woman be one whose former husband has not been known by her to have been living during the last seven years, her last married surname must be inserted.

In a case of re-marriage, arising from whatever cause, the woman must be described in this column by her husband’s surname, followed by the word “formerly,” and then by her maiden surname.

Column 3, headed “Age.” In this column the precise age of each of the parties at his or her last birthday must be inserted (in figures), whenever it can be ascertained.

Endeavour should always be made to ascertain the precise age by inquiry, instead of simply copying the age as stated in the certificate; as one of the parties may have passed another birthday since the notice was given.

When the precise age cannot be ascertained, the approximate age should be inserted thus:—“about 30” [*or as the case may be*].

Column 4, headed “Condition.” In this column must be inserted “bachelor” or “widower,” and “spinster” or “widow,” as the case may be.

If, however, the man has been divorced, his condition must be entered in the following manner:—“The divorced husband of Mary Robinson, formerly Smith (spinster)” [*or “widow,” as the case may be*]. If the woman has been divorced, her condition must be inserted thus:—“The divorced wife of Thomas Jones.”

If either of the parties be one whose former wife or husband has not been known by him or her to have been living during the last seven years, such party must be described in this column as “widower” or “widow,” as the case may be.

In a case of re-marriage, this column must be thus filled up:—“Previously married at on the ” [*stating the place and time of marriage*].

Column 5, headed “Rank or Profession.” In this column must be inserted the rank, profession, or occupation of the man, and also that of the woman if she have any which can be described.

(s) The full description of the building as certified to the Registrar-General for the purposes of its enrolment on the official list of registered buildings should always be used in marriage entries.

Column 6, headed "Residence at the time of Marriage." In this column the dwelling place of each of the parties at the time of marriage must be inserted. In town districts the number of the house, the name of the street or place, and the name of the parish, town, or city; and in country districts the name of the house (if any), the name of the village or hamlet, and the name of the township or parish should be given.

If either of the parties have, since the notice was given, removed into another district, both places of residence should be inserted thus:—"Late of , but now residing at " [*as the case may be*].

Column 7, headed "Father's Name and Surname." In this column must be inserted the name or names and the surname of the father of each of the parties, whether he be living or not. If either of the fathers is deceased, the word "(deceased)" should be inserted below the name and surname of the deceased father.

Column 8, headed "Rank or Profession of Father." In this column the rank, profession, or occupation of the father of each of the parties should be inserted.

Persons of illegitimate birth are sometimes unwilling or unable to state the name and the rank or profession of their fathers. If, on these particulars being asked for, there be any hesitation or reluctance to state them, no further inquiry need be made, and these two columns may be left blank.

The line below the columns of the entry commencing "Married in the" must, if the marriage has been solemnized according to any religious rite or ceremony, be filled up thus:—

"Married in the Wesleyan Chapel, Vauxhall Walk, according to the rites and ceremonies of the Wesleyan Methodists, by certificate [*or by licence*]."

When the religious ceremony has been performed by a minister who is not acting as the authorised person whose presence is required by the Act and by whom the marriage is to be registered, such minister may, if he wishes to do so, sign the register above the place in which the authorised person must sign.

When the marriage has been solemnized by an authorised person for the registered building in which the marriage has taken place, he must, after his signature and description, add the words "for the said chapel" (or whatever the building may be called).

When the marriage has been solemnized by an authorised person appointed for another registered building in the same district, he must, after his signature and description, add the name of the registered building for which he is authorised.

When a marriage takes place without a religious service the words "according to the rites and ceremonies of the" must be struck through with the pen.

The authorised person must now request the parties married, if they can read, carefully to examine the entry: if they cannot read, he must read it to them.

The parties married must then, if they can write, sign their names in their usual manner, on the lines following the words "This marriage was solemnized between us." The man must sign on the upper line. If the woman has not been previously married she must sign in her maiden surname, and if a widow, in her previous married surname.

The witnesses must, if they can write, sign their names in their usual manner on the lines following the words "In the presence of us."

If either of the parties or witnesses is unable to write, the authorised person must request him or her to make a mark at the beginning of the line intended for his or her signature, and after such mark the words "The mark of " must be written, followed by the Christian name or names and the surname of the party or witness whose mark it is, written at full length.

If either of the parties or witnesses be a foreigner, the authorised person should endeavour to obtain a signature in English characters. But if such person be unable to sign in English characters, he should, if able to write, be requested to sign in his ordinary manner. The authorised person should then

write below "The signature of _____," adding the full Christian name and surname as though a mark had been made.

The signatures or marks should in all cases be the unassisted productions of the parties and witnesses.

The authorised person must then carefully examine the entry.

All errors that are discovered must then be corrected (*t*). If there be an error in the signature of any person, such person, *not* the authorised person, must correct it.

Errors should be corrected as follows :—

(a) If a word or letter has been omitted, it should be added thus—

<i>One.</i>		1	2
		Anne	r
R. P.		" Catherine Phillips,"	" Harriet."
<i>Two.</i>		^	^
R. P.			

(b) If a letter too many has been inserted, it should be struck out, thus—

<i>Three.</i>		3
R. P.		" Henry."

(c) If a wrong letter has been written, it should be corrected, thus—

<i>Four.</i>		4
R. P.		a
		" Margeret."

(d) If more than one letter in a word, or if an entire word, be erroneous, a line should be drawn through the word,

<i>Five.</i>		5	6
R. P.	leaving it legible, thus—	" Richard,"	" Tenth,"
<i>Six.</i>	and the correct word		
R. P.	should be inserted, thus—	" Richard,"	" Third."

The authorised person should number all the errors in the entry and in the outer margin thereof, whether such errors were made by himself or by any other person.

The numbers inserted in the entry should be in figures; but the numbers in the margin should be in words, to which the initials of the authorised person must be added.

The first error in the register book should be numbered *one*, and each subsequent error should be numbered consecutively to the last.

A newly-appointed authorised person making entries in a register book which was in use by his predecessor should continue the series of error numbers, if any, already commenced.

The letters " R. P." attached to the numbers in the margin in the foregoing examples, are supposed to be the initials of the authorised person's name and surname.

No error may be corrected in the manner here set forth except at the actual time of marriage. Errors subsequently discovered can only be corrected in the manner hereinafter prescribed.

In no case whatever may an authorised person correct an error by smearing it out, or by writing upon it. And no writing, nor even an accidental blot, may be removed from a register by erasing with a knife or by any other means.

The authorised person must then sign the entry in his usual manner, and after the words "authorised person for" he must write either "the said chapel," or the name of the registered building for which he is an authorised person. The entry is then complete.

In case any space or spaces should at any time have been inadvertently passed over in either of the registers of marriages, lines in ink should be drawn through such space or spaces, and similar lines should be drawn through an equal number of blank spaces in the duplicate book, in order that the numbers of subsequent entries in both books may for the future agree. Marginal notes should be inserted opposite the cancelled blank spaces, explaining the cause of

(*t*) See examples, *post*, pp. 150, 151.

their not having been used. Under no circumstances whatever should the printed numbers in either register book be altered.

When the marriage register books of a registered building are filled, one of them must be delivered to the superintendent registrar of the district in which such registered building is situate, at the same time as the certified copies containing the last entry in such register book are delivered to him; and the other register must be kept in the fireproof safe belonging to such registered building. 61 & 62 Vict. c. 59, s. 11 (3).

As the duplicate registers approach completion, the authorised person should, at least a fortnight before the last entry is likely to be reached, apply to the Registrar-General for new books, using for that purpose the form of application which will be found in the books.

Every person who wilfully makes or causes to be made for the purpose of being inserted in any register of marriage, any false statement touching any of the particulars herein required to be known and registered, will be subject to the same pains and penalties as if he were guilty of perjury. 6 & 7 Will. 4, c. 86, s. 41.

Every person who refuses, or without reasonable cause omits to register any marriage solemnized by him, or which he ought to register, is liable to a penalty not exceeding fifty pounds. 6 & 7 Will. 4, c. 86, s. 42.

6. *Certificates and licences to be preserved.*

All certificates and licences delivered to an authorised person officiating in a registered building as authorities for marriages therein must be numbered with the numbers of the entries in the register book to which they relate, and must be preserved in the iron safe belonging to such registered building until the end of each quarter, when they must be delivered to the superintendent registrar with the corresponding certified copies. 61 & 62 Vict. c. 58, s. 8.

7. *Correction of errors discovered after the completion of the entry.*

An error in a completed entry of marriage may be corrected under the provisions of section 44 of the Registration Act, 1836, within one calendar month next after its discovery, by an authorised person who at the time is charged with the duty of registering marriages in the building wherein the marriage took place. No error in an entry discovered subsequently to the marriage may be corrected except as herein directed. 6 & 7 Will. 4, c. 86, s. 44.

Authorised persons should, in every case, require satisfactory documentary or other proof of an alleged error before deciding to make any correction under the provisions of the section above referred to; and when the alleged error affects the registered names or surnames of the parties married, or any other important fact in the entry, the authorised person should report the case fully to the Registrar-General and await instructions.

The original entry must not be altered in any way, but the correction must be made by means of a marginal note, in which the nature of the error or errors and the truth of the matter must be specified; and this must be done by the authorised person, in the presence of the parties married (if possible), but should they have left the neighbourhood or have died, the correction may then be made by him in the presence of the superintendent registrar of the district and two credible witnesses, one or both of whom should, if possible, have witnessed the marriage, or should be personally cognizant of the facts involved in the correction.

If the correction be of some erroneous particular contained in the entry, a line in ink should be drawn thereunder; but if the correction be intended to supply an omission in the entry, the nature of such omission will be sufficiently indicated in the marginal note.

The marginal note must be dated, and must be signed by the authorised person, and by the persons (as above described) in whose presence it was made (u).

(u) See examples, *post*, pp. 150, 151.

The correction must in every respect be similarly carried out in both duplicate registers; and should one of them have been deposited with the superintendent registrar, arrangements should be made with him for the correction to be simultaneously carried out in both books by the authorised person.

If the certified copies, including the corrected entry, have not been made and delivered to the superintendent registrar the marginal note must of course appear in the margin of the copy. But if the certified copies have been so delivered, then the authorised person must immediately after the correction make out on a separate entire sheet of the printed forms for certified copies a fresh copy of the corrected entry with its marginal note, which he must certify and then transmit by post to the Registrar-General.

24 & 25 Vict.
c. 58, s. 36.

Whoever forges or fraudulently alters any entry in any register of marriages, or in any certified copy thereof, is guilty of felony.

8. *Quarterly Returns of Certified Copies of Entries of Marriages.*

61 & 62 Vict.
c. 58, s. 11.

The authorised person for every registered building must, in the months of April, July, October, and January respectively, make and deliver to the superintendent registrar (*v*) of the district in which such registered building may be situate, a true copy, certified by him under his hand, of all the entries of marriages in his registers since the date of the last certified copy; and if there shall have been no marriage entered therein since that date, he must certify the fact under his hand on the form supplied by the Registrar-General for that purpose.

The 26th section of the Act 1 Vict. c. 22, with which the Marriage Act, 1898, must be read, directs that the quarterly certified copies and nil returns shall in every case be made up and refer respectively to the last days of March, June, September, and December then next preceding.

The copies must be made on un mutilated leaves of the forms supplied by the Registrar-General for the purpose, which are on paper of a peculiar description, having a watermark as a safeguard against the substitution of false entries. The superintendent registrar cannot accept as a certified copy any copy which is not made on one of such entire official forms; and such forms must not be used for any other purpose than that for which they are supplied.

The authorised person must not include in his certified copies for any quarter entries which belong to another quarter. If any entries be included in the wrong quarter, the superintendent registrar will draw lines through them, and disallow payment for them: they must then be recopied as part of the return for the quarter to which they belong.

The ink used in making certified copies should be of a good black colour, and of permanent quality.

On beginning to write on a leaf of the forms, the authorised person should begin on the side which has "commence on this side" printed at the top of the page; and all notes and error numbers which are in the margin of the original entries should be written in the right hand margin of that page; on turning to the second side of the leaf, he should then insert in the left hand margin of that page all the notes and numbers which are in the margin of the original entries.

It is essential that in the spaces provided for the purpose in the heading of each entry, the year, the name of the registered building, and the name of the registration district and county should be filled up in the certified copies.

The writing should be distinct and bold, and without flourishes. All Christian names and surnames, especially, should be written so distinctly in every letter that they may not be mistaken for any other Christian names or surnames.

The entries must be copied in the order in which they have been made in the register book, no spaces being left blank in the copies, except such as may have been left blank in the register book.

The authorised person must write in the copy the No. of the entry which is printed in the register book.

The copies must be literal transcripts of the entries in the register book, reproducing even the inaccuracies which occur in the originals. If any name appears to have been misspelt in the register book, it must be spelt the same way in the copy. Every obliteration and interlineation, with the number affixed thereto, and every marginal correction in the original entries, must be faithfully inserted in the copies. Signatures need not be imitated, but should be legibly and accurately copied.

At the foot of each page of the form for certified copies is the following certificate, to be signed by the authorised person, the words and figures in *italics* having been previously filled in, as the case may require:—

“I, *William Thompson*, the authorised person for the *Congregational Church, Harrow Road*, in the county of *London*, do hereby certify that the foregoing, comprising *two* entries numbered *13, 14*, is a true copy of the entries so numbered, made in the marriage register books of the said *church*. Witness my hand this *first* day of *October*, 1899.

“*William Thompson.*”

It is also essential that the certificate at the foot of every page containing a copy of an entry should, after the requisite insertions, be so signed; inasmuch as without such signature the copy will not be a certified copy as required by law, nor can it be accepted as such by the superintendent registrar. It must be further observed that if any dated marginal note appears against any entry on a page, the date inserted in the certificate at the foot must not be earlier than the date in such marginal note.

Application for a fresh supply of certified copy forms should be made to the Registrar-General at least a fortnight before they are required for use.

Every leaf of the certified copies should be delivered to the superintendent registrar entire, without having been torn or cut. The leaves should not be soiled, nor be creased by repeated folding, which may be avoided by delivering them folded in the same manner as that in which they are transmitted from the general register office.

The certificates and licences corresponding with the entries in the quarter's certified copies must be delivered to the superintendent registrar with the copies.

The delivery of quarterly certified copies to the superintendent registrar is usually made through the Registrars of Births and Deaths in his district, in accordance with the statutory enactment that it shall be sufficient if such copies are given or delivered to some registrar under the supervision of the superintendent registrar. 7 Will. 4 &
1 Vict. c. 22,
s. 29.

Registrars of Births and Deaths are instructed to apply personally for the said certified copies and nil returns once a quarter, namely—during the first fifteen days of January, April, July, and October; and previously to such applications they should make known by letter or post-card the day and hour when they will call. If the copies are not ready for delivery within the period above mentioned, the authorised person should forward his quarterly return of certified copies or nil return to the superintendent registrar by post, leaving the postage unpaid.

The superintendent registrar must pay or cause to be paid to the authorised person the sum of sixpence for every entry contained in such quarterly certified copies duly delivered in accordance with the foregoing rules. If the copies are ready when the registrar calls for them he will pay for them at once; but if they are not then ready and are afterwards forwarded direct to the superintendent registrar the authorised person must apply to him for payment. 61 & 62 Vict.
c. 58, s. 11 (2).

When the quarterly certified copies are received at the general register office, they will undergo careful examination, and should any error or omission, or any erasure be detected, or if the writing is not sufficiently legible, the authorised person will be required to supply the Registrar-General with a fresh copy without charge.

It may be useful to direct attention to certain clauses in the Registration Acts which impose penalties on persons who refuse or neglect to register marriages,

or to make and deliver the certified copies and certificates required of them, or who shall carelessly lose or injure the registers or copies.

“Every person who shall refuse, or without reasonable cause omit, to register any marriage solemnized by him or which he ought to register, and every person having the custody of any register book (of marriages), or certified copy thereof or of any part thereof, who shall carelessly lose or injure the same, or carelessly allow the same to be injured whilst in his keeping, shall forfeit a sum not exceeding fifty pounds for every such offence.” (6 & 7 Wm. 4, c. 86, s. 42.)

“Every person who, under the provisions of the said Acts for marriages, and for registering births, deaths, and marriages or either of them, as amended by this Act, is required to make and deliver to any superintendent registrar a certified copy of the entries of any births, deaths, or marriages registered by him, or the certificate required by the said Acts, as amended by this Act, that there have been no entries since the last certificate, and who, after being duly required to deliver such certified copy or such certificate as aforesaid, shall refuse, or during one calendar month neglect so to do, shall be liable for every such offence to forfeit a sum not exceeding ten pounds, to be recovered as other penalties for offences against the said Acts are made recoverable: Provided always that in such case a moiety of the penalty shall not go to the informer, but the whole shall go to the Registrar-General, or such other person as the Commissioners of the Treasury shall appoint, for the use of Her Majesty.” (1 Vict. c. 22, s. 28.)

“If any authorised person refuses or fails to comply with this Act, or the enactments or regulations for the time being in force with respect to the solemnization and registration of marriages, he shall be guilty of an offence under this Act, and shall be liable, on summary conviction, to a penalty not exceeding ten pounds, or on conviction on indictment to imprisonment with or without hard labour for a term not exceeding two years, or to a fine not exceeding fifty pounds, and shall upon conviction cease to be an authorised person.” (61 & 62 Vict. c. 58, s. 12.)

9. *Searches and Certificates.*

6 & 7 Will. 4, c. 86, s. 35,
61 & 62 Vict.
c. 58, s. 7 (5). Every authorised person must “at all reasonable times” allow searches to be made in any register book in his keeping, and give a copy certified under his hand of any entry therein, on payment of the following fees:—

For every search extending over a period of not more than one year—one shilling.

For every additional year—sixpence.

For every certified copy of an entry—two shillings and sixpence.

All searches must be made by the authorised person himself, or in his presence. He must prevent any injury to the register books, or any alteration of any part of an entry therein.

All such certified copies must be written on forms procured by the authorised person at his own expense, or on plain paper—not upon any official forms supplied by the Registrar-General.

54 & 55 Vict.
c. 39. Under the provisions of the Stamp Act, 1891, a “copy or extract (certified) of or from any register of births, baptisms, marriages, deaths or burials,” must bear a stamp of one penny; and by section 64 of that Act it is enacted that—

“The duty upon a certified copy or extract of or from any register of births, baptisms, marriages, deaths or burials is to be paid by the person requiring the copy or extract, and may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the copy or extract is signed, before he delivers the same out of his hands, custody or power.”

But certified copies of registers of marriages transmitted by authorised persons to the Registrar-General are exempt from this duty.

Under the provisions of section 10 of the Savings Banks Act, 1887 (50 & 51 Vict. c. 40), authorised persons are liable to be applied to for marriage certificates at the reduced fee of one shilling. The following is the section referred to :—

“ For the purpose of the Acts relating to post office savings banks or to trustee savings banks and of the Government Annuities Acts, 1829 to 1882, a certificate of the marriage of any depositor, or of any person insured under any of the above-mentioned Acts, shall be given under his hand by a registrar of marriages, or other person having the care of the register in which such marriage is entered for a sum not exceeding one shilling in place of all fees or payments in respect of the same, on application being made for the same in such form and under such regulations as may be from time to time approved of by the Registrar-General of births, deaths and marriages”

Applications under the above section must, in order to be entertained, be made on the form (x) approved by the Registrar-General for the purpose. The forms are of two kinds, viz., Form No. 4 for the purpose of the post office savings banks, and Form No. 4 for the purpose of trustee savings banks. Each form bears the *facsimile* of the Registrar-General's signature. If the application is made otherwise than personally it must, with the fee of one shilling, be conveyed to the authorised person for the registered building where the marriage was solemnized, free of all cost to him; and an envelope or cover of the proper size must be sent, fully addressed to the person to whom this document is to be returned. If it is to be returned by post—the case being one relating to a trustee savings bank—the necessary postage stamps must be affixed by the applicant to such envelope or cover. In the case of post office applications the postage will be free.

10. *Supply of Books and Forms.*

Authorised persons, upon applying to the Registrar-General, may obtain gratuitously, from time to time, any of the following books or forms, namely:—

- Marriage register books (in duplicate),
- Forms for the quarterly returns of certified copies of marriages,
- Forms for certificates of no registry.

But forms for marriage certificates to be issued by authorised persons to the public are not supplied by the Registrar-General.

All official communications should be addressed to “ The Registrar-General, General Register Office, Somerset House, London, W.C.,” and the postage should be left unpaid.

BRYDGES P. HENNIKER,
Registrar-General.

General Register Office,
Somerset House,
21st February, 1899.

The Local Government Board hereby approve the making of the foregoing Rules by the Registrar-General.

Given under our seal of office, this 22nd day of February, in the year 1899.

HENRY CHAPLIN,
President.
(L.S.)
S. B. PROVIS,
Secretary.

(x) For these forms application must be made to the Controller, Savings Bank Department, General Post Office, London: they are not obtainable at local post offices. In the case of trustee savings banks, the approved forms may be obtained from Messrs. Knight & Co., 4, La Belle Sauvage, Ludgate Hill, London, E.C.

EXAMPLES of Corrections of ERRORS in completed Marriage Entries—continued.

2. Error in Surname of the Man and of his Father and in the Man's Signature, discovered by Birth Certificate. The Parties Married having left the neighbourhood the Correction is made by the Authorised Person in the presence of the Superintendent Registrar and two Witnesses, one of whom was the Man's Brother, the other having been present at the Marriage.

1899. Marriage solemnized at West Croydon Baptist Chapel, in the District of Croydon, in the County of Surrey.							
Col.	1.	2.	3.	4.	5.	6.	7.
No.	When Married.	Name and Surname.	Age.	Condition.	Rank or Profession.	Residence at the time of Marriage.	Father's Name and Surname.
5	Seventeenth June, 1899	Henry Harker Margaret Dawson	37 years 29 years	Bachelor Widow	Builder —	Epsom Road, Croydon Holmwood, Dorking	Charles Harker (deceased) James Martin
Married in the West Croydon Baptist Chapel, according to the Rites and Ceremonies of the Baptists, by Certificate.							
This Marriage was solemnized between us, { Henry Harker } in the { W. J. Thompson } { And in the } { Presence of us, } { Robert Martin } { JAMES WARD, } { Authorised Person for the said Chapel. }							

In Entry No. 5, Cols. 2 and 7, and in the Man's Signature, for "Harker" read "Harcourt," Corrected on the 5th December 1899, by me,
James Ward,
Authorised Person for the West Croydon Baptist Chapel.

In the presence of
Robert Dixon,
Superintendent Registrar.

Robert Martin. } Witnesses,
Thomas Harcourt. }

3. The Man, of Illegitimate Birth, having been married in his reputed Name—that of his Putative Father—afterwards wished to have his Maternal Surname inserted in the Entry.

1899. Marriage solemnized at St. Anthony's Church, Scotland Road, in the District of Liverpool, in the County of Liverpool.							
Col.	1.	2.	3.	4.	5.	6.	7.
No.	When Married.	Name and Surname.	Age.	Condition.	Rank or Profession.	Residence at the time of Marriage.	Father's Name and Surname.
16	Seventeenth September, 1899	Richard Wilson Emma Murray	41 years 35 years	Bachelor Widow	Of independent means Typewriter	32, Clayton Street, Liverpool 96, Vauxhall Road, Liverpool	— James Dawson
Married in St. Anthony's Church, according to the Rites and Ceremonies of the Roman Catholics, by Certificate.							
This Marriage was solemnized between us, { Richard Wilson } in the { W. J. Thompson } { And in the } { Presence of us, } { Elizabeth Dawson } { WILLIAM SULLIVAN, } { Authorised Person for St. Augustine's Church. }							

In Entry No. 16, Col. 2, for "Wilson" read "Hamley, otherwise Wilson," Corrected on the 16th November, 1899, by me,
P. C. Finlay,
Authorised Person for St. Anthony's Church.

In the presence of
Richard Hamley } The Parties
Emma Hamley } Married.

RULES AND REGULATIONS UNDER THE MARRIAGE ACT, 1898 (61 & 62 VICT. C. 58), FOR THE GUIDANCE OF REGISTRATION OFFICERS. MADE BY THE REGISTRAR-GENERAL FEBRUARY 21, 1899, AND APPROVED BY THE LOCAL GOVERNMENT BOARD, FEBRUARY 22, 1899.

(Stat. R. and O. 1899 (No. 78).)

1. *Effect of the Act.*

This Act [which received the Royal Assent on 12th August, 1898, and comes into operation on 1st April, 1899] amended the law relating to the attendance of registrars of marriages at Nonconformist registered buildings, by legalising the solemnization of marriages in such buildings in the presence of an authorised person, and without the presence of a registrar.

No alteration whatever is made in the requirements of the Registration Acts, 1836 to 1856, and of the regulations for superintendent registrars and registrars of marriages, as to the giving of notices of marriage by the parties and their due attestation by a qualified registration officer, or as to the issue of certificates and licences by superintendent registrars, except as hereinafter stated with respect to marriages under the Act of 1898.

For marriage in register offices or in registered buildings in the presence of a registrar of marriages the procedure remains absolutely unaltered in all respects.

61 & 62 Vict.
c. 58, s. 5 (1). It is now, however, enacted that—

“Whenever a marriage is intended to be solemnized in a registered building, and the parties intending to contract the marriage have duly fulfilled all the conditions from time to time required by law to entitle the superintendent registrar to issue a certificate, or certificate and licence, authorising the marriage, and the superintendent registrar does not receive notice at the time when the form of notice of marriage as required by law is given to him, that the parties intending to contract the marriage require a registrar to be present at the marriage, the superintendent registrar shall, subject to the provisions of this Act, issue under his hand to one of those parties a certificate, or certificate and licence, as the case may require, in accordance with the forms set forth in Schedules B and C annexed to the Marriages Act, 1856.”

19 & 20 Vict.
c. 119.

Should the contracting parties give notice to the superintendent registrar that it is their wish to be married in the presence of a registrar of marriages, it is expressly declared that “nothing in this Act contained shall relieve the registrar from attendance at such marriage as now by law required and the fulfilment of the duties now imposed by law”; and in case of such attendance the registrar will be entitled to the fees now authorised by law.

61 & 62 Vict.
c. 58, s. 10.

If a registrar of marriages should be required to attend a marriage in a building for which an authorised person has been appointed, such marriage must not be recorded in the registers supplied to such authorised person, but the registrar of marriages must register it in his own register book, in accordance with his regulations.

2. *Notices of Marriage in a Registered Building for which an Authorised Person has been appointed.*

[In consequence of the foregoing provisions it will be necessary on and after the 1st April, 1899, that] registrars and superintendent registrars when attesting notices of marriage should most carefully ascertain from the parties giving notice for marriage in a registered building for which an authorised person has been appointed, whether it is desired that such marriage shall be registered by an authorised person, or whether they wish a registrar of marriages to attend and register the marriage.

No pressure whatever must be used to induce parties giving notice of marriage to adopt either one method of procedure or the other: they must be left to make their own unbiassed selection.

The important point for registration officers to bear in mind is that unless there is a specific request made for the attendance of a registrar of marriages in a registered building for which an authorised person has been appointed, it must always be taken for granted that the marriage is to be solemnized under the new Act in the presence of an authorised person.

New forms of notices of marriage have been prepared for the use of superintendent registrars under the new alternative conditions already indicated; and superintendent registrars must take care that all registration officers within their districts who are in the habit of attesting notices of marriage are duly furnished with these new notice forms, which are for all purposes to supersede the forms previously in use.

The new forms provide for the special request or "notice" to be used only in cases where the attendance of a registrar of marriages is required in a registered building for which an authorised person has been appointed: if in such cases the special "notice" is not filled up and signed by the party giving the notice of marriage, the superintendent registrar who receives such notice must assume that the marriage is to be solemnized in the presence of an authorised person.

When a registration officer is required to take a notice for a marriage in a registered building for which no authorised person has been appointed, he must, if necessary, explain to the applicant that the presence of a registrar of marriages will be indispensable; and in such case the "special request" on the notice form need not be filled up.

When the attendance of a registrar of marriages is specially requested at a marriage in a registered building for which an authorised person has been appointed, the registrar should require the parties to satisfy him that the minister, trustees, owners, deacons, or managers of the building, will not object to the use of the building under those conditions, forasmuch as no marriage can take place therein without the consent of the minister thereof. 19 & 20 Vict. c. 119, s. 11.

On receiving a notice of marriage containing a special request for the attendance of a registrar of marriages at a building for which an authorised person has been appointed, the superintendent registrar should, when entering such notice in his marriage notice book, record in the margin of the entry a note that a registrar of marriages is to attend.

3. *Authorised Persons.*

Before entering in his notice book any notice of marriage to be solemnized in the presence of an authorised person, the superintendent registrar should consult his list of registered buildings and authorised persons for the purpose of satisfying himself whether the building named is one for which there is an authorised person, and can therefore be legally used for a marriage without the presence of a registrar. In cases of doubt the superintendent registrar must apply to the Registrar-General, accepting the notice conditionally meanwhile: if the registered building should prove not to be available under the Act, a fresh notice would be required.

No marriage can take place under the Marriage Act, 1898, in any registered building, except in the presence of a person who has been duly certified to the Registrar-General as having been duly authorised for the purpose by the trustees or governing body of that registered building, or of some other registered building sanctioned for use under the Act in the same registration district; nor until duplicate marriage registers have been supplied by the Registrar-General. 61 & 62 Vict. c. 58, ss. 6 (3) and 7 (3).

When it is desired to certify to the Registrar-General the appointment of an authorised person to act for any registered building, the trustees or governing body thereof must apply to the Registrar-General for the proper forms to be used for that purpose. These appointment forms are [will be] issued in triplicate; the information as to the name and postal address of the person proposed must be filled up on each of the forms, which must then be signed by the trustees or governing body and be forwarded within a week to the Registrar-General, who will send one to the superintendent registrar and one to the 61 & 62 Vict. c. 58, s. 6 (4).

authorised person, the remaining form being filed in the General Register Office.

Should the trustees or governing body appoint more than one authorised person for the same building, they must, when sending such appointment to the Registrar-General, notify which of such authorised persons is to be held responsible for carrying out the provisions of section 11 of the Marriage Act, 1898, and for discharging the other duties contingent thereon.

Superintendent registrars will be supplied by the Registrar-General with new books, in which all the registered buildings in their respective districts will be entered up to the date of issue; and as regards such registered buildings as may be sanctioned by the Registrar-General for use under the Marriage Act, 1898, the superintendent registrar must from time to time, in accordance with instructions which he will hereafter receive, record the name and address of the authorised person or persons certified for such building.

Superintendent registrars must keep all registrars of marriages and all other registration officers who attest marriage notices in their respective districts fully and promptly informed as to the registered buildings for which authorised persons have been appointed.

A person duly authorised to act for one registered building in a registration district, may officiate at any other sanctioned registered building within the same district, but he cannot act in a registered building which is situate in another registration district.

Whenever an authorised person changes his address his new address should be at once communicated to the Registrar-General and to the superintendent registrar of the district in which the building for which he is authorised is situated.

On the death, retirement, removal to another district, or deposition from office of any authorised person, the trustees or governing body must at once inform the Registrar-General, in order that forms may be sent for the appointment of a successor; and they must at the same time state what arrangements will be made for marriages in the building pending the new appointment. The trustees or governing body will be held responsible for the safe custody of the registers and for compliance with the Act in all respects whilst a vacancy exists.

No authorised person must act until his appointment has been received and acknowledged by the Registrar-General.

4. *Certificates for Marriage.*

Exclusively for the purposes of the new Act, special forms of certificates for marriage without and with licence have been prepared for the use of superintendent registrars, and whenever a marriage is to take place in a registered building in the presence of an authorised person, one of these new certificate forms must be used, as it bears upon it the "printed instructions for the due solemnization of the marriage" required by the statute. Those instructions are as follow:—

61 & 62 Vict.
c. 58, s. 5 (2).

- (1.) This marriage must take place in the registered building named in the certificate on the other side hereof.
- (2.) No other registered building may be used for this marriage.
- (3.) The authorised person for the registered building named in this certificate, or an authorised person for some other registered building in the same registration district, must be present at the marriage.
- (4.) At least *two* witnesses must also be present.
- (5.) The certificate (or certificates) issued by the superintendent registrar as the legal authority for the marriage, must be delivered to the authorised person in whose presence the marriage is to be solemnized. Unless this document (or these documents) be in his possession the authorised person must on no account allow the marriage to take place.
- (6.) It is absolutely essential to the validity of the marriage that in some part of the ceremony each of the parties shall make the following

declaration:—"I do solemnly declare that I know not of any lawful impediment why I, A. B., may not be joined in matrimony to C. D.," and that each shall say to the other, "I call upon these persons here present to witness that I, A. B., do take thee, C. D., to be my lawful wedded wife (or husband),"—or in lieu thereof shall say, "I, A. B., do take thee, C. D., to be my wedded wife (or husband)."

- (7.) These declaratory and contracting words must be said in the presence of the authorised person acting on the occasion, and of the witnesses to the marriage.
- (8.) Immediately after the marriage is solemnized the authorised person must register it in the duplicate register books of the registered building in which the marriage has taken place; and the entry *in both books* must be signed by the parties married, by at least two witnesses, and by the authorised person.
- (9.) After the registration of the marriage, a certified copy of the entry thereof may be obtained from the authorised person for 2s. 7d., provided application be made for it at the time of marriage; if applied for subsequently the fee for the certificate would be 3s. 7d.

For the purposes of marriage in register offices, or in registered buildings, when a registrar of marriages is to be present, the old forms of certificate are retained and must be used.

The new certificate forms are of larger size than the old ones.

5. *Compensation Fees to Registrar of Marriages (temporary and spent).*

6. *Quarterly Certified Copies.*

As regards the obligation to furnish quarterly certified copies of all entries of marriages registered by them, and to deposit with the superintendent registrar one copy of every filled register book, authorised persons are placed on exactly the same footing as clergymen of the Church of England; as is also the case with regard to the manner in which the certified copies are to be collected and paid for. 61 & 62 Vict. c. 58, s. 11.

Full instructions as to the preparation and delivery of their quarterly certified copies are given to authorised persons in the official regulations supplied to them by the Registrar-General under the Marriage Act, 1898—which correspond with those issued to registrars of marriages as nearly as circumstances admit. 61 & 62 Vict. c. 58, s. 16.

The authorised person is instructed that the registrar of births and deaths will call for the certified copies every quarter, on dates to be previously announced by letter or postcard; and that when the copies are so called for the authorised person will be entitled to receive payment for the same in accordance with the following clause in the Marriage Act, 1898:— 7 Will. 4 & 1 Vict. c. 22, s. 29.

"The superintendent registrar shall pay or cause to be paid to the authorised person the sum of sixpence for every entry contained in the said certified copy, and this sum shall be reimbursed to the superintendent registrar by the board of guardians of the union for which he is appointed." 61 & 62 Vict. c. 58, s. 11 (4).
61 & 62 Vict. c. 58, s. 11 (2).

Superintendent registrars must, therefore, instruct the registrars of births and deaths to call for the copies every quarter, and to make this statutory payment of sixpence per entry to authorised persons at the time the copies are collected, just in the same manner as is done in the case of copies collected from clergymen. If the copies are not ready for delivery when called for, the authorised person is directed to forward them himself to the superintendent registrar and to obtain payment from him direct.

Superintendent registrars must from time to time supply their registrars of births and deaths with correct lists of the names and addresses of all authorised persons from whom certified copies have to be collected.

The registrar having collected from authorised persons such certified copies or nil returns as can be obtained, and also the certificates and licences corresponding with the entries in the quarter's copies, must on or before the twentieth of the month in which he applied for the same, deliver them to the superintendent registrar.

The superintendent registrar on receiving the copies must carefully examine them and see—

1. That they are made on un mutilated leaves of the forms supplied by the Registrar-General for the use of authorised persons, and not upon any other forms ;
2. That they purport to be copies of entries of marriages made in accordance with Schedule (C) of the Registration Act, 1836 ;
3. That entries belonging to different quarters have not been copied on one and the same leaf ;
4. That each entry is duly numbered ;
5. That the number of the first entry in each return follows the number of the last entry of the previous return in consecutive order ;
6. That the numbers of the entries in each return are in consecutive order,—the entries having been copied in the same order in which they were made in the register book ;
7. That no spaces have been left blank in the copies, except such as appear to have been left blank also in the register book ;
8. That the blank spaces in the heading of each entry have been filled up, and not merely those in the heading of the first entry on each page ;
[*The superintendent registrar must insert the name of his district in the first line of the heading.*]
9. That the name of the registered building in the entries agrees with that given in the Registrar-General's official list ;
10. That each entry of a marriage has been signed by the authorised person in whose presence the marriage was solemnized, and by the parties and two witnesses ;
11. That the certificate at the foot of each page has been duly filled up and signed by an authorised person for the registered building to which the copies relate.
12. That the certificates and licences corresponding with the entries in the certified copies are all enclosed with the copies.

If through an interruption in the consecutive order of the numbers, an entry appears to have been omitted, the superintendent registrar must forthwith, either through the registrar or by letter, apply for such entry, or for an explanation of the apparent omission.

On discovering any of the above-mentioned defects or irregularities the superintendent registrar should endeavour to obtain their rectification forthwith by the authorised person who certified the copies.

The superintendent registrar must insert the number of the last entry in the return of copies from each authorised person in the book in which he similarly enters the last numbers received from the clergy.

As regards the transmission of the quarterly copies to the Registrar-General, the superintendent registrar must follow the same rules as to dates of transmission as are prescribed in his regulations in respect of the other returns to be forwarded by him.

With the certified copies of entries and nil returns must be sent also the certificates and licences for marriage corresponding with the entries.

The superintendent registrar must at the same time report to the Registrar-General—

1. Every case in which a return of certified copies or nil return has not been received from any authorised person within his district.
2. The number of any entry which appears by the interruption of the series of entries in any authorised person's copies to have been omitted from the return.

The certified copies and other documents received from authorised persons must be sent by post to the Registrar-General in one of the brown paper covers marked "M" which are used for other quarterly marriage returns. Returns from authorised persons should not be sent in the same cover with the other marriage returns.

The superintendent registrar must include in his quarterly account of fees

for entries a charge of two pence for every entry contained in the return of certified copies received from authorised persons in his district.

Registrars of births and deaths must include in their quarterly claims for allowances and expenses the sum of one shilling for collecting the certified copies or nil returns from authorised persons, just as in the case of clergymen of the Church of England. The names of the registered buildings to which the returns belong must be specified in the claim.

7. *Filled Register Books.*

Whenever the duplicate register books kept by an authorised person are filled, one copy thereof must be delivered to the superintendent registrar of the district in which the registered building is situate, at the same time as the certified copies containing the last entry in such book are delivered. If any such filled register book be not delivered within a reasonable time the superintendent registrar must apply for it. 61 & 62 Vict.
c. 58, s. 11 (3).

On receipt of a register book the superintendent registrar must carefully examine it, and if it be not in all respects complete and in good condition, he should at once report the matter to the Registrar-General.

The filled books as they are received must be numbered consecutively in a separate series for each registered building.

Every register book received from an authorised person must be promptly indexed, and the superintendent registrar will be entitled to receive from the Registrar-General the sum of seven shillings for each index completely made.

8. *Searches and Certificates.*

Superintendent registrars must allow searches to be made in indexes to marriage registers received from authorised persons, and must give certified copies of such registers precisely upon the same conditions as are prescribed in their regulations with reference to other indexes and registers in their custody.

BRYDGES P. HENNIKER,
Registrar-General.

General Register Office,
Somerset House,
21st February, 1899.

The Local Government Board hereby approve the making of the foregoing rules by the Registrar-General.

Given under our seal of office, this 22nd day of February, in the year 1899.

HENRY CHAPLIN,
President.

S. B. PROVIS,
Secretary.

(L.S.)

THE MARRIAGES VALIDITY ACT, 1899 (a).

62 & 63 VICT. c. 27.

An Act to remove doubts as to the Validity of certain Marriages.

[9th August, 1899.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. No marriage solemnized, or to be hereafter solemnized, in any church in England or in Ireland, after publication of banns in such church, shall be or Validation
of certain
marriages.

(a) Short title given by sect. 2 of the Act.

be deemed to have been invalid by reason only that one of the parties to such marriage was in the case of a marriage in England resident in Ireland, or in the case of a marriage in Ireland resident in England, and that banns may have been published in any church of the parish or place in which such party was resident, according to the law or custom there prevailing, and not in the manner required for the publication of banns in the part of the United Kingdom in which the marriage has been solemnized.

THE PROVISIONAL ORDER (MARRIAGES) ACT, 1905 ^(x).

5 EDW. 7, c. 23.

An Act to enable Provisional Orders to be made for removing any invalidity or doubt attaching to Marriages by reason of some informality.

[11th August, 1905.]

[Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—]

Provisional orders for removing doubts as to validity of marriages.

1.—(1.) A Secretary of State may, in the case of marriages solemnized in England which appear to him to be invalid or of doubtful validity by reason of some informality, make a provisional order for the purpose of removing the invalidity or doubt.

(2.) The draft of every such order shall be advertised in such manner as the Secretary of State thinks fit not less than one month before the order is made, and the Secretary of State shall consider all objections to the order sent to him in writing during that month, and shall, if it appears to him necessary, direct a local inquiry into the validity of any such objections.

(3.) An order of the Secretary of State under this Act shall be of no force unless confirmed by Parliament, and the Secretary of State may bring in a Bill for confirming the order; and if while a Bill confirming any such order is pending in either House of Parliament a petition is presented against the order, the Bill, so far as it relates to the order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills ^(y).

MARRIAGE WITH FOREIGNERS ACT, 1906.

6 EDW. 7, c. 40.

An Act to amend the Law with respect to Marriages between British Subjects and Foreigners.

[29th November, 1906.]

Marriages of British subjects with foreigners abroad.

1.—(1.) Any British subject who desires to be married in a foreign country to a foreigner according to the law of that country may, if it is desired for the purpose of complying with the requirement of the law of that country to obtain the certificate hereinafter mentioned, give notice of the marriage, if resident in the United Kingdom, to the registrar, and if resident abroad, to the marriage officer, and apply to the registrar or officer for a certificate that after proper notices have been given no legal impediment to the marriage has been shown to the registrar or officer to exist, and the registrar or officer shall, after the conditions set out in the schedule to this Act have been complied with, give the certificate applied for unless the certificate is forbidden or a caveat is in operation as provided in that schedule, or some legal impediment to the marriage is shown to the registrar or officer to exist.

(2.) If a person—

(a) knowingly and wilfully makes a false oath or signs a false notice of marriage for the purpose of a certificate under this section; or

^(x) Short title given by sect. 2 of the Act.

^(y) For list of provisional orders under this Act, *vide post*, p. 238.

- (b) forbids the granting of a certificate under this section by falsely representing himself to be a person who is authorised to forbid the certificate, knowing that representation to be false,

that person shall be guilty of perjury, and if the offence is committed abroad, may be tried in any county or place in the United Kingdom in which the offender may be, and dealt with in the same manner in all respects as if the offence had been committed in that county or place.

(3.) If any person enters a caveat on grounds which the registrar, or officer, or, in case of appeal, the Registrar-General declares to be frivolous, that person shall be liable to pay as a debt to the applicant for the certificate such sum as the registrar, or officer, or, in the case of appeal, the Registrar-General considers to be proper compensation for the damage caused to the applicant by the entering of the caveat.

(4.) Such fees may be charged in respect of any notice of an intended marriage, or any application for or grant of a certificate, or the entering of a caveat under this section, as may be fixed, as respects certificates to be granted by or caveats entered with registrars, by the Registrar-General, with the consent of His Majesty in Council, and, as respects certificates to be granted by or caveats entered with a marriage officer, as may be fixed by Order under the Consular Salaries and Fees Act, 1891 (z).

2.—(1.) Where arrangements have been made to the satisfaction of His Majesty with any foreign country for the issue by the proper officers of that country, in the case of persons subject to the marriage law of that country proposing to marry British subjects in the United Kingdom, of certificates that after proper notices have been given no impediment according to the law of that country has been shown to exist to the marriage, His Majesty may, by Order in Council, make regulations—

Marriage of
foreigners
with British
subjects in
the United
Kingdom.

- (a) requiring any person, subject to the marriage law of that foreign country, who is to be married to a British subject in the United Kingdom, to give notice of the fact that he is subject to the marriage law of that country to the person by or in the presence of whom the marriage is to be solemnised; and
- (b) forbidding any person to whom such a notice is given to solemnize the marriage or to allow it to be solemnized until such a certificate as aforesaid is produced to him.

(2.) If any person knowingly acts in contravention of, or fails to comply with any such regulation, he shall be guilty of a misdemeanour, and shall be liable to a fine not exceeding one hundred pounds, or to imprisonment for a term not exceeding one year.

(3.) Nothing in this section shall be taken to relate or have any reference to any marriages between two persons professing the Jewish religion solemnized according to the usages of the Jews in the presence of the secretary of a synagogue authorised by either the Births and Deaths Registration Act, 1836 (a), or the Marriages (Ireland) Act, 1844 (b), or by the Marriage and Registration Act, 1856 (c), to register such a marriage, or of a deputy appointed by such secretary by writing under his hand, and approved by the president for the time of the London Committee of deputies of the British Jews by writing under his hand.

3. His Majesty may by Order in Council make general regulations prescribing the forms to be used under this Act and making such other provisions as seem necessary or expedient for the purposes of this Act, and may by Order in Council revoke, alter, or add to any Order in Council made under this Act (d).

Power to
make general
regulations.

4. In this Act, unless the context otherwise requires,—

Interpreta-
tion.

The expressions “Registrar-General” and “registrar” mean respectively the Registrar-General within the meaning of the Births and Deaths

(z) 54 & 55 Vict. c. 36.

(a) *Ante*, p. 90.

(b) *Post*, p. 194.

(c) *Ante*, p. 104.

(d) Power not yet exercised.

Registration Act, 1836 (*d*), and a superintendent registrar of marriages within the meaning of the Marriage Act, 1836 (*e*); and

The expression "marriage officer" means a marriage officer for the time being under the Foreign Marriage Act, 1892 (*f*), and includes any person for the time being empowered to register a marriage under section eighteen of that Act.

Application
to Scotland.

5. In the application of this Act to Scotland—

- (1.) References to the forbidding of a certificate shall not apply;
- (2.) A reference to a caveat shall be construed as a reference to an objection, and the provisions respecting the entry of a caveat on frivolous grounds shall not apply;
- (3.) The expressions "Registrar-General" and "registrar" mean respectively the Registrar-General of births, deaths, and marriages in Scotland, and the registrar of births, deaths, and marriages for a parish or district under the Registration of Births, Deaths, and Marriages (Scotland) Act, 1854 (*g*), and the Acts amending that Act;
- (4.) Paragraph (a) of sub-section one of section two shall be read as if the following words were inserted after the word "solemnized," namely, "or to any registrar, law agent, or other person whom he desires to draw up any declaration of irregular marriage between him and a British subject"; and paragraph (b) of the same sub-section shall be read as if the following words were inserted after the word "solemnized," namely, "or to aid in effecting the said irregular marriage";
- (5.) The duly appointed minister of a synagogue shall be substituted in sub-section (3) of section two for the secretary of the synagogue or deputy as described in that sub-section.

Application
to Ireland.

6. In the application of this Act to Ireland the expressions "Registrar-General" and "registrar" mean respectively the Registrar-General and registrar within the meaning of the Marriages (Ireland) Act, 1844 (*h*).

Short title.

7. This Act may be cited as the Marriage with Foreigners Act, 1906.

SCHEDULE.

PART I.

PROVISIONS APPLICABLE EXCEPT IN SCOTLAND.

A.—*Conditions.*

1. The applicant shall sign a notice stating the name, surname, profession, condition, nationality, and residence of each of the parties to the marriage, and whether each of the parties is or is not a minor.

2. The applicant shall at the time of giving the notice make and subscribe in a book to be kept by the registrar or officer for the purpose, an oath—

- (a) that the applicant believes that there is no impediment to the marriage by reason of kindred or alliance, or otherwise; and
- (b) that the applicant has for three weeks immediately preceding had his usual residence within the district of the registrar or officer; and
- (c) if the applicant, not being a widower or widow, is under the age of twenty-one years, that the consent of the persons whose consent to the marriage is required by law has been obtained thereto, or that there is no person having authority to give that consent, as the case may be.

(*d*) *Ante*, p. 90.

(*e*) *Ante*, p. 81.

(*f*) *Ante*, p. 119.

(*g*) *Post*, p. 177.

(*h*) *Post*, p. 194.

3. The registrar or officer shall file every such notice and keep it with the archives of his office, and shall forthwith enter in a book of notices to be kept by him for the purpose, and post up in some conspicuous place in his office a copy of every such notice, and shall keep it so posted up for at least twenty-one days.

4. The book in which the notice is entered, and the copy posted up, shall be open at all reasonable times without fee to the inspection of any person.

B.—Provisions as to forbidding Certificate, and as to Caveats.

5. Any person whose consent is required by law to marriages solemnized in England may forbid the certificate by writing the word “forbidden” opposite to the entry of the application in the book of notices, and by subscribing thereto his name and residence and the character by reason of which he is authorised to forbid the certificate.

6.—(a) Any person may enter with the registrar or officer a caveat against the granting of the certificate, signed by him or in his behalf and stating his residence and the grounds of his objection.

(b) The registrar or officer shall examine into the matter of the caveat and decide whether it ought to obstruct the giving of the certificate or not, but he may if he thinks fit refer the matter to the Registrar-General to decide. If the registrar or officer decides the question himself, and decides that the caveat ought to obstruct the granting of the certificate, the applicant for the certificate may appeal to the Registrar-General in manner provided by regulations made under this Act.

(c) The caveat shall cease to operate—

(i) if withdrawn by the persons entering it; or

(ii) if it is decided by the registrar or officer or by the Registrar-General on appeal that it ought not to obstruct the giving of the certificate.

PART II.

PROVISIONS APPLICABLE IN SCOTLAND.

A.—Conditions.

1. The applicant shall give a notice to the registrar of the parish or district in which he shall have resided for a period of not less than fifteen clear days previous to the giving thereof. Such notice shall be in the form as nearly as may be set forth in Schedule A. to the Marriage Notice (Scotland) Act, 1878 (*i*), but shall state, in addition to the particulars therein set out, the nationality of the parties to the intended marriage.

2. On the receipt of a notice of an intended marriage the registrar, being satisfied that the notice is conformable to the requirements of this Act, shall forthwith enter the particulars set forth in the notice in the marriage notice book kept in terms of the Marriage Notice (Scotland) Act, 1878, and shall on the same day post or put up in a conspicuous and accessible place on the door or outer wall of his office a public notice of the intended marriage, in the form as nearly as may be set forth in the Schedule B. annexed to the said last-mentioned Act, but stating, in addition to the particulars therein set out, the nationality of the parties to the intended marriage, and shall keep the same so posted or put up for seven consecutive days thereafter.

B.—Provisions as to Objections.

3.—(a) Any person may enter with the registrar an objection against the granting of the certificate signed by him or on his behalf, and stating his residence and the grounds of his objection.

(i) *Post*, p. 189.

(b) The registrar shall refer any objection to the Registrar-General, who shall decide whether it ought to obstruct the granting of the certificate or not, and shall instruct the registrar accordingly, and the instructions so given shall be carried out by the registrar.

(c) The objection shall cease to operate—

(i) if withdrawn by the person entering it; or

(ii) if it is decided by the Registrar-General that it ought not to obstruct the granting of the certificate.

DECEASED WIFE'S SISTER'S MARRIAGE ACT, 1907.

7 EDW. 7, c. 47.

An Act to amend the Law relating to Marriage with a Deceased Wife's Sister.

[28th August, 1907.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Marriage with a deceased wife's sister not to be deemed void as a civil contract except in certain cases.

1. No marriage heretofore or hereafter contracted between a man and his deceased wife's sister, within the realm or without, shall be deemed to have been or shall be void or voidable (*k*), as a civil contract, by reason only of such affinity: Provided always that no clergyman in holy orders of the Church of England shall be liable to any suit, penalty, or censure, whether civil or ecclesiastical, for anything done or omitted to be done by him in the performance of the duties of his office to which suit, penalty, or censure he would not have been liable if this Act had not been passed: (*l*)

Provided also that when any minister of any church or chapel of the Church of England shall refuse to perform such marriage service between any persons who, but for such refusal, would be entitled to have the same service performed in such church or chapel, such minister may permit any other clergyman in holy orders in the Church of England, entitled to officiate within the diocese in which such church or chapel is situate, to perform such marriage service in such church or chapel.

Provided also that in case, before the passing of this Act, any such marriage shall have been annulled, or either party thereto (after the marriage and during the life of the other) shall have lawfully married another, it shall be deemed to have become and to be void upon and after the day upon which it was so annulled, or upon which either party thereto lawfully married another as aforesaid.

Saving of existing rights and interests.

2. No right, title, estate or interest, whether in possession or expectancy, and whether vested or contingent at the time of the passing of this Act, existing in, to, or in respect of, any dignity, title of honour, or property, and no act or thing lawfully done or omitted before the passing of this Act shall be prejudicially affected, nor shall any will be deemed to have been revoked by reason of any marriage heretofore contracted as aforesaid being made valid by this Act. And no claim by the Crown for duties leviable on or with reference to death, and before the passing of this Act due and payable, and no payment, commutation, composition, discharge, or settlement of account in respect of any duties leviable on or with reference to death before the passing of this Act duly made or given, shall be prejudicially affected by anything herein contained.

Nothing in this Act shall affect the devolution or distribution of the real or personal estate of any intestate, not being a party to the marriage, who at the time of the passing of this Act shall be and shall until his death continue to be a lunatic, so found by inquisition.

(*k*) See 5 & 6 Will. 4, c. 54 (*ante*, p. 81).

(*l*) See *R. v. Dibdin*, (1910) P. 57.

3.—(1.) Nothing in this Act shall remove wives' sisters from the class of persons adultery with whom constitutes a right, on the part of wives, to sue for divorce under the Matrimonial Causes Act, 1857. Saving for
20 & 21 Vict.
c. 85, s. 27.

(2.) Notwithstanding anything contained in this Act or the Matrimonial Causes Act, 1857, it shall not be lawful for a man to marry the sister of his divorced wife, or of his wife by whom he has been divorced, during the lifetime of such wife.

4. Nothing in this Act shall relieve a clergyman in holy orders of the Church of England from any ecclesiastical censure to which he would have been liable if this Act had not been passed by reason of his having contracted or hereafter contracting a marriage with his deceased wife's sister. Liability of
clergyman to
ecclesiastical
censure.

5. In this Act the word "sister" shall include a sister of the half-blood. Interpreta-
tion.

6. This Act may be cited as the Deceased Wife's Sister's Marriage Act, 1907. Short title.

NAVAL MARRIAGES ACT, 1908.

8 EDW. 7, c. 26.

An Act to authorise, for the purpose of Marriages in the United Kingdom, the Publication of Banns and the Issue of Certificates on board His Majesty's Ships in certain cases. [1st August, 1908.]

1. Where one of the parties to a marriage intended to be solemnized in England after the publication of banns is an officer, seaman, or marine, borne on the books of one of His Majesty's ships at sea, the banns may be published on three successive Sundays at morning service on board that ship by the chaplain, or, if there is no chaplain, by the captain or other officer commanding the ship, and, where banns have been so published, the person who published them shall, unless the banns have been forbidden on any of the grounds on which banns may be forbidden, give a certificate of publication. Publication
of banns on
board his
Majesty's
ships.

2. Where one of the parties to a marriage intended to be solemnized or contracted in England otherwise than after the publication of banns, or by licence, or by special licence, is an officer, seaman, or marine borne on the books of one of His Majesty's ships at sea, he may give notice of his intention to the captain or other officer commanding the ship, together with the name and address of the other party to the marriage, and such other information as may be necessary to enable the captain or other officer to fill up a certificate under this section, and shall at the same time make and sign such a declaration as is required by section two of the Marriage and Registration Act, 1856 (*m*), and the captain or other officer may attest the declaration and thereupon issue a certificate to the officer, seaman, or marine giving the notice. Issue of cer-
tificates on
board His
Majesty's
ships.

3. A certificate given under this Act shall be in such form as may be prescribed by the Admiralty, and shall have the like force and effect as a certificate of publication of banns in a place of worship in which banns may lawfully be published or a certificate by a superintendent registrar under the Marriage and Registration Act, 1856 (*m*), as the case may be, and all enactments (including penal provisions) relating— Application
of enact-
ments.

(1) to the publication of banns and certificates thereof; and

(2) to notices and declarations for obtaining certificates from superintendent registrars, and to such certificates;

and all rules required under any such enactments to be observed shall apply in the case of marriages to which this Act applies, subject to such adaptations therein as may be made by His Majesty by Order in Council (*n*).

4. Where any such marriage as aforesaid is intended to be solemnized or contracted in Scotland, this Act shall apply subject to the following modifications:— Application
to Scotland.

(a) References to the registrar shall be substituted for references to the superintendent registrar:

(*m*) *Ante*, p. 105.

(*n*) See Order in Council of 21st December, 1908 (*post*, p. 164).

41 & 42 Vict.
c. 43.

(b) References to the Marriage Notice (Scotland) Act, 1878 (*o*), shall be substituted for references to the Marriage and Registration Act, 1856 :

(c) A certificate of publication of banns under this Act shall have the same force and effect as a certificate granted by a session clerk or other proper officer for granting the same of the due proclamation of the banns of marriage under the law of Scotland.

Application
to Ireland.

5.—(1) Where any such marriage as aforesaid is intended to be solemnized or contracted in Ireland, this Act shall apply subject to the following modifications :—

(a) References to a district registrar of marriages in Ireland shall be substituted for references to a superintendent registrar :

(b) References to the Marriage Law (Ireland) Amendment Act, 1863 (*p*), shall be substituted for references to the Marriage and Registration Act, 1856 (*q*), except that so much of section four of the first-mentioned Act as requires a declaration of attendance at a place of worship in respect of the male party shall not apply in the case of declarations under this Act or made for the purposes of a marriage under this Act.

(2) Where one of the parties to a marriage intended to be solemnized or contracted in Ireland by licence from a district registrar of marriages in Ireland is an officer, seaman, or marine borne on the books of one of His Majesty's ships at sea, the provisions of section two of this Act as applied to Ireland shall apply as if the marriage was intended to be had without licence, and the notice to be given by the other party to the intended marriage need contain no statement as to his abode or residence in any district in the United Kingdom ; but, before the district registrar issues the licence, the certificate of the captain or other officer of the ship given under this Act shall be produced to him.

Short title
and com-
mencement.

6. This Act may be cited as the Naval Marriages Act, 1908, and shall come into operation on the first day of January nineteen hundred and nine.

ORDER IN COUNCIL UNDER THE NAVAL MARRIAGES ACT, 1908 (8 EDW. 7, C. 26), ADAPTING PROVISIONS OF ENACTMENTS AND RULES AS TO PUBLICATION OF BANNS AND ISSUE OF CERTIFICATES.

(Stat. R. and O. 1908 (No. 1316).)

At the Court at Buckingham Palace, the 21st day of December, 1908.

Present,

The King's Most Excellent Majesty in Council.

4 Geo. 4, c. 76.

Whereas there was this day read at the Board a memorial from the Right Honourable the Lords Commissioners of the Admiralty, dated the 16th day of December, 1908, in the words following, viz. :—

“Whereas by the Marriage Act, 1823, it is enacted that all banns of matrimony shall be published in an audible manner in the parish church or in some public chapel of or belonging to such parish or chapelry wherein the persons to be married shall dwell, according to the form of words prescribed by the rubric prefixed to the office of matrimony in the Book of Common Prayer, and that, wheresoever it shall happen that the persons to be married shall dwell in divers parishes or chapelries, the banns shall in like manner be published in the church or in any such chapel as aforesaid belonging to such parish or chapelry wherein each of the said persons shall dwell, and that all other the rules prescribed by the said rubric concerning

(*o*) *Post*, p. 186.

(*p*) *Post*, p. 217.

(*q*) *Ante*, p. 104.

the publication of banns and the solemnization of matrimony and not thereby altered shall be duly observed, and that the churchwardens and chapelwardens of churches and chapels wherein marriages are solemnized shall provide a proper book of substantial paper, marked and ruled respectively in manner directed, for the register book of marriages, and that the banns shall be published from the said register book of banns by the officiating minister, and not from loose papers, and, after publication, shall be signed by the officiating minister or by some person under his direction :

“ And whereas by the Marriages (Ireland) Act, 1844, as amended by the Irish Church Act, 1869, it is provided that all the rules prescribed by the rubric concerning the solemnization of marriages shall continue to be duly observed, except as hereinafter provided, by every person in holy orders of the Church of Ireland who shall solemnize any marriage in Ireland :

“ And whereas by the said rubric it is provided that banns are to be published after the accustomed manner, and that, if the persons that are to be married dwell in divers parishes, the curate of the one parish shall not solemnize matrimony betwixt them without a certificate of the banns being thrice asked from the curate of the other parish :

“ And whereas the accustomed manner of publishing banns of matrimony in accordance with the said rubric describes each of the parties to the intended marriage as of a parish :

“ And whereas it is enacted by the Marriage Act, 1836, and the Marriage (and) Registration Act, 1856, that every notice of marriage which shall be given under the provisions of the last mentioned Act, or of any of the therein recited Acts, shall be in the form of the Schedule A. to that Act annexed, or to the like effect, and that the party intending marriage shall at the time of giving to the superintendent registrar, or respective superintendent registrars, as the case may be, such notice make and sign or subscribe a solemn declaration in writing at the foot or in the body of such notice, declaring *inter alia*, that the parties to the said marriage, in case the marriage is intended to be had without licence, have for the space of seven days immediately preceding the giving of such notice had their usual place of abode and residence within the district of the superintendent registrar, or respective superintendent registrars, to whom such notice or notices as the case may be shall be so given, and that the superintendent registrar to whom any such notice of marriage shall be given, shall file all such notices, and keep them with the records of his office, and shall forthwith enter the particulars and the date thereof and the name of the party giving the same into the marriage notice book, and shall cause the notice of marriage or a true and exact copy thereof as entered in the marriage notice book under the hand of such superintendent registrar to be suspended or affixed in some conspicuous place in the office of the said superintendent registrar during twenty-one successive days next after the day of the entry of such notice in his marriage notice book before any marriage shall be solemnized in pursuance of such notice :

“ And whereas by section 2 of the said last-mentioned Act it is enacted that every person who shall knowingly or wilfully make and sign or subscribe any false declaration, or who shall sign any false notice for the purpose of procuring any marriage under the provisions of that Act or any of therein recited Acts, shall suffer the penalties of perjury :

“ And whereas it is enacted by the Marriage Notice (Scotland) Act, 1878, that every notice of intended marriage which shall be given under the provisions of that Act shall be in the form as nearly as may be set forth in the Schedule A. annexed to that Act, and that on the receipt of such notice the registrar being satisfied that the notice is conformable to the requirements of that Act shall forthwith enter the particulars in the notice in ‘ The Marriage Notice Book ’ therein mentioned, and shall on the same day post or put up in a conspicuous and accessible place on the door or outer wall of his office a public notice of the intended marriage in the form set forth in the Schedule B. annexed to that Act, and shall keep the same so posted or put up for seven consecutive days thereafter :

7 & 8 Vict.

c. 81 ;

32 & 33 Vict.

c. 42.

6 & 7 Will. 4,

c. 85 ;

19 & 20 Vict.

c. 119.

41 & 42 Vict.

c. 43.

“ And whereas by section 10 of the said last-mentioned Act certain provisions are made with regard to the stating of objections to an intended marriage, and to the effect to be given to such objection by the registrar :

“ And whereas it is enacted by section 14 of the last-mentioned Act that every person who shall wilfully make or sign any false declaration or sign or give any false notice of an intended marriage under the provisions of that Act shall be deemed in law to be guilty of the crime of perjury, and shall on conviction suffer the penalties attached by law to the crime of perjury :

“ And whereas by the Marriage Law (Ireland) Amendment Act, 1863, it is enacted that every notice of an intended marriage given to the registrar under the provisions of that Act, or of the Marriage (Ireland) Act, 1844, shall be in the form set forth in the Schedule A. to that Act annexed, and shall state, *inter alia*, the dwelling place of each of the parties to the said intended marriage, and the time, not being less than seven days, during which each of the parties has dwelt therein, and that, when notice of a marriage has been given, the registrar shall file the notice so given to him and keep the same with the records of his office and shall forthwith enter a true copy of the notice in his marriage notice book, and shall on the day on which he shall have received such notice, or on the following day at the latest, send by post in a registered letter a copy of the notice under his hand to the minister of the church, chapel, or registered place of public worship stated in the notice as that in which the marriage is intended to be solemnized, and to the minister of the church, chapel, or place of public worship which the parties to the marriage or either of them usually attend, or the registry office of the Society of Friends, or secretary of a synagogue, by whom respectively the marriage is to be registered as the case may require, and that, when the marriage is intended to be contracted in the office of the registrar, he shall in addition to sending a copy of the notice to the minister of the church, chapel, or place of public worship as aforesaid, forthwith suspend a copy of the notice, or a printed form properly and legibly filled up, in some conspicuous place in his office, and keep the same so suspended in the case of a marriage intended to be celebrated by virtue of a certificate for twenty-one days, and in the case of a marriage intended to be celebrated by virtue of a licence during seven days next after the date of entry of the notice, and that any party intending marriage under the provisions of that Act shall, at the time of giving the registrar the notice required by that Act, make and sign or subscribe a solemn declaration in writing according to the form set forth in Schedule B. to that Act annexed declaring, *inter alia*, that the parties to the said marriage in case the marriage is intended to be had without licence, have for the space of seven days immediately preceding the giving of such notice had their usual place of abode and residence within the district of the registrar or respective registrars to whom such notice or notices as the case may be, shall be so given: or, in case such marriage is intended to be had by licence, that one of the parties had for the space of fifteen days immediately preceding the giving of such notice had his or her usual place of abode and residence within the district of the registrar to whom such notice shall be so given :

“ And whereas by section 15 of the last-mentioned Act it is enacted that any person who shall knowingly or wilfully make any false declaration or sign any false notice required by that Act, or by the Marriage (Ireland) Act, 1844, for the purpose of procuring any marriage shall suffer the penalties of perjury :

“ And whereas by section 41 of the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870, it is enacted that where the marriage is intended to be contracted in the office of the registrar, and where there is not any minister of the church, chapel, or place of public worship which the parties to the marriage or either of them usually attend, and where the parties to the marriage are not Jews or members of the Society of Friends, the registrar shall cause a copy of the notice given to him to be published at the expense of the parties intending marriage, once, at least, in two

26 & 27 Vict.

c. 27 ;

7 & 8 Vict.

c. 81.

33 & 34 Vict.

c. 110.

consecutive weeks next after he has received such notice, in some newspaper circulating in the district in which such marriage is intended, or, if there is not any newspaper circulating in such district, then in some newspaper circulating in the county in which such district is situate :

“ And whereas, in order to comply with the forms of notice of marriage scheduled respectively to the Marriage and Registration Act, 1856, the Marriage Notice (Scotland) Act, 1878, and the Marriage Law (Ireland) Amendment Act, 1863, a woman who gives notice of an intended marriage is required to state certain particulars as to the dwelling place or residence of the other party, and by the Marriage and Registration Act, 1856, the Marriage Notice (Scotland) Act, 1878, and the Marriage (Ireland) Act, 1844, forms of certificates are provided in which a superintendent registrar, registrar, or district registrar is required to state certain particulars as to the dwelling place or residence of the parties to the intended marriage :

19 & 20 Vict.
c. 119;
41 & 42 Vict.
c. 43;
26 & 27 Vict.
c. 27;
7 & 8 Vict.
c. 81.

“ And whereas under the provisions of the said recited Act certain fees are payable to superintendent registrars, registrars, and district registrars for entering notices of marriage in their respective marriage books and for giving certificates and for other services therein specified :

“ And whereas by the Naval Marriages Act, 1908, it is enacted in sections 1 and 2 thereof that :—

“ 1. Where one of the parties to a marriage intended to be solemnized in England after the publication of banns is an officer, seaman, or marine borne on the books of one of His Majesty's ships at sea, the banns may be published on three successive Sundays at morning service on board that ship by the chaplain, or, if there is no chaplain, by the captain or other officer commanding the ship, and, where banns have been so published, the person who published them shall, unless the banns have been forbidden on any of the grounds on which banns may be forbidden, give a certificate of publication.’

“ 2. Where one of the parties to a marriage intended to be solemnized or contracted in England otherwise than after the publication of banns, or by licence, or by special licence, is an officer, seaman or marine borne on the books of one of His Majesty's ships at sea, he may give notice of his intention to the captain or other officer commanding the ship, together with the name and address of the other party to the marriage, and such other information as may be necessary to enable the captain or other officer to fill up a certificate under this section, and shall at the same time make and sign such a declaration as is required by section 2 of the Marriage and Registration Act, 1856, and the captain or other officer may attest the declaration and thereupon issue a certificate to the officer, seaman or marine giving the notice.’

“ And whereas by section 3 of the said last recited Act it is enacted that all enactments (including penal provisions) relating

“ (1) to the publication of banns and certificates thereof, and

“ (2) to notices and declarations for obtaining certificates from superintendent registrars, and to such certificates :

and all rules required under any such enactments to be observed shall apply in the case of marriages to which that Act applies subject to such adaptations therein as may be made by His Majesty by Order in Council :

“ And whereas by sections 4 and 5 of the Naval Marriages Act, 1908, it is enacted that, where any such marriage as aforesaid is intended to be solemnized or contracted in Scotland or in Ireland, that Act shall apply subject to the modifications therein set forth.

“ And whereas we have had under consideration the herein-before recited enactments, and we are of opinion that it is desirable to make certain adaptations in the said enactments relating to the matter aforesaid, and in the rules required under the said enactments to be observed :

“ We beg leave humbly to recommend that your Majesty may be graciously pleased by your Order in Council to sanction the adaptations

in the said enactments and in the rules thereunder required to be observed hereinafter contained.

- “ 1. The Lords Commissioners of the Admiralty shall provide on every of His Majesty's ships when at sea a banns of marriage book, and the banns shall be published from the said banns of marriage book, and not from loose papers, and, after publication, shall be signed by the chaplain or other person who publishes the banns.
- “ 2. Any officer, seaman, or marine borne on the books of any of His Majesty's ships at sea may be described in any banns of matrimony published on board that ship, or in any place of worship in which banns of matrimony may lawfully be published, as ‘of His Majesty's ship. ,’ without the addition of any parish or chapelry.
- “ 3. Every notice of an intended marriage given under sections 2, 4 and 5 of the Naval Marriages Act, 1908, shall be in writing signed by the person giving such notice, and shall be in the form or to the effect of Form A, B or C in the Schedule to this order annexed, as the case may require, and any certificate issued in pursuance of such notice shall state the particulars set forth in such notice.
- “ 4. In any declaration made and signed by an officer, seaman, or marine borne on the books of one of His Majesty's ships at sea at the time of his giving notice of an intended marriage, it shall not be necessary for him to make any declaration as to his abode and residence immediately preceding the giving of such notice, and it shall be sufficient for him to declare that he is an officer, seaman, or marine (as the case may be), borne on the books of one of His Majesty's ships at sea.
- “ 5. Where any of the said recited Acts require a superintendent registrar, or a registrar, or district registrar, to file any notice of marriage and to keep them with the records of his office, and to enter any copy of any notice of marriage or any particulars of any such notice of marriage in any marriage notice book, the captain or other officer commanding the ship to whom any notice of marriage shall be given shall file the same, and keep it with his official papers, and shall enter in a marriage notice book, to be provided by us, a true and exact copy thereof, together with the date of such entry, and shall attest the same with his signature, and all provisions in any of the said Acts relating to the marriage notice books therein mentioned shall be applicable to the marriage notice book so provided as aforesaid.
- “ 6. When notice is given to the captain or other officer commanding a ship of any marriage intended to be solemnized or contracted otherwise than after the publication of banns, the captain or other officer commanding the ship shall, if the marriage be intended to be solemnized or contracted in England, or in the office of the registrar in Ireland, cause a copy of the notice to be suspended or affixed in some conspicuous place in the said ship during twenty-one successive days, and shall, if the marriage is intended to be solemnized or contracted in Scotland, on the day on which he enters such notice cause a public notice of the intended marriage in the form as nearly as may be of Form D in the Schedule to this Order annexed to be posted or put up in such place as aforesaid, and shall keep the same so posted or put up for seven consecutive days next after the date of the entry of such notice in the marriage notice book.
- “ 7. Section 10 of the Marriage Notice (Scotland) Act, 1878, shall apply to objections to notices of marriages intended to be solemnized or contracted in Scotland given under the provisions of the Naval Marriages Act, 1908, as if the captain or other officer commanding any of His Majesty's ships were a registrar within the meaning of the Marriage Notice (Scotland) Act, 1878, except that such

captain or officer shall not in any case be required to report on any objection to the sheriff or sheriff's substitute of any county, but shall give to himself such directions as to amending any notice and granting a certificate thereon or cancelling the same as by the said section a sheriff or sheriff substitute may give to a registrar.

- “8. In the case of any marriage intended to be solemnized or contracted in Ireland, the captain or other officer in command to whom any notice of marriage shall be given, shall, as soon as practicable after he shall have received such notice, send by post in a registered letter a copy of the notice authenticated by his signature to the person or persons to whom copies of the notices are required to be sent by section 3 of the Marriage Law (Ireland) Amendment Act, 1863, or, if there is no such person, shall cause a copy of the notice to be published as soon as practicable after he has received such notice at the expense of the officer, seaman, or marine intending marriage, as provided by section 41 of the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870. 26 & 27 Vict. c. 27. 33 & 34 Vict. c. 110.
- “9. When any officer, seaman or marine under the provisions of the Naval Marriages Act, 1908, gives notice of a marriage intended to be solemnized or contracted in England, it shall not be necessary for the other party to state in any notice of marriage which she shall give to a superintendent registrar the dwelling place or length of residence of such officer, seaman or marine, or the district and county in which he dwells, nor shall it be necessary, if the marriage is intended to be solemnized or contracted in Scotland, to state in any notice of marriage which the other party shall give to a registrar the dwelling place or parish or district and county in which such officer, seaman or marine dwells. Nor shall it be necessary if the marriage is intended to be solemnized or contracted in Ireland to state in any notice of marriage which the other party shall give to a district registrar the dwelling place or length of residence of such officer, seaman or marine, or the district or county in which he dwells, but it shall be sufficient in each case if, in lieu thereof, such other party shall state in any such other notice that the man with whom marriage is intended, is an officer, seaman or marine (as the case may be) borne on the books of one of His Majesty's ships at sea, and shall state the name of such ship, and in any certificate, licence, or notice which any superintendent registrar in England, registrar in Scotland, or district registrar in Ireland, shall give pursuant to any of the recited Acts and of the Naval Marriages Act, 1908, it shall be sufficient to describe the man as an officer, seaman or marine (as the case may be), borne on the books of one of His Majesty's ships at sea, together with the name of such ship, without stating the dwelling place, length of residence, or district, parish or county in which he dwells.
- “10. The hereinbefore recited provisions of section 2 of the Marriage and Registration Act, 1856, section 14 of the Marriage Notice (Scotland) Act, 1878, and section 15 of the Marriage Law (Ireland) Amendment Act, 1863, shall apply to notices and declarations made under the provisions of the Naval Marriages Act, 1908, and of this Order in Council as if the said notices and declarations were notices and declarations made under any of the first-mentioned Acts or any Acts therein cited.
- “11. This Order to come into operation on the first day of January, 1909.”

FORM A.

(To be used when marriage is to be in England or Wales.)

Notice of marriage pursuant to the Marriage Registration Act, 1856, and the Naval Marriages Act, 1908.

To the commanding officer of H.M.S.

I, the undersigned hereby give you notice that a marriage is intended to be had without licence within three calendar months from the date hereof between me and the other party herein named and described (that is to say):—

	Name and Surname of each party.	Condition (whether bachelor, spinster, widower, or divorced).	Rank or profession.	Age of each party.	Dwelling place of woman.	Length of residence of woman.	Church or building in which the Marriage is to be solemnized.	Registration District in which the woman dwells.
						(a)	(b)	
Man								
Woman								

And I hereby solemnly declare that I believe there is no impediment of kindred or alliance or other lawful hindrance to the said marriage and that I, the above-named am a (c) borne on the books of one of H.M. ships at sea, namely, H.M.S.

And I further declare that to the best of my knowledge and belief the particulars entered in the above table are true and that

(d) [I being a minor and not a widower, the person whose consent to my marriage is by law required has consented to the above marriage].

[I being a minor and not a widower, there is no person whose consent to my marriage is by law required].

[The other party named herein being a minor and not a widow, the person whose consent to her marriage is by law required has consented to the above marriage].

[The other party named herein being a minor and not a widow there is no person whose consent to her marriage is by law required].

And I make the foregoing declarations solemnly and deliberately, conscientiously believing the same to be true, pursuant to the provisions of the Marriage Registration Act, 1856, and the Naval Marriages Act, 1908, well knowing that every person who shall knowingly or wilfully make and sign or subscribe any false declaration, or who shall sign any false notice for the purpose of procuring any marriage under the provisions of the said Acts or any of the several Acts therein recited shall suffer the penalties of perjury.

In witness whereof I have hereunto set and subscribed my hand this day of 19 .

Signed and declared by the above-named in the presence of .
(Witness) Signature of declarant .

Name .
Commanding officer of H.M.S.

(a) If more than one calendar month "one month and upwards" will be sufficient.
(b) A marriage cannot be solemnized in any place of worship without the consent thereto of the minister or other authority. It therefore behoves the person giving notice for marriage in a place of worship to ascertain that consent will be granted.

(c) Fill in "officer," "seaman" or "marine," as the case may be.

(d) Expunge all or so many of these paragraphs as not applicable.

FORM B.

(To be used when marriage is to be in Scotland.)

Notice of marriage pursuant to the Marriage Notice (Scotland) Act, 1878, and the Naval Marriages Act, 1908.

To the commanding officer of H.M.S. “ ,”

I, , hereby give you notice, that I and the other person herein named are about to contract marriage; that is to say:—

—	Name and Surname of each Party.	Condition (Bachelor, Spinster, Widower, or Widow).	Rank or Profession.	Age of each Party.	Dwelling Place of Woman.	Parish or District and County in which the Woman dwells.
Man						
Woman						

And I solemnly declare that I believe that there is no impediment of consanguinity or affinity or of age or other lawful hindrance to the said marriage, and that I am (a) borne on the books of one of H. M. ships at sea, namely, H.M.S. “ .”

And this I declare knowing that if the declaration is false I expose myself to the penalties of perjury.

In witness whereof I have hereunto set and subscribed my hand this day of , 19 .

Signature .

Subscribed and declared by the)
above named)
in my presence,)

Commanding Officer of H.M.S. “ .”

(a) Fill in “officer,” “seaman” or “marine,” as the case may be.

FORM C.

(To be used when marriage to be in Ireland.)

Notice of marriage pursuant to the Marriage Law (Ireland) Amendment Act, 1863, and the Naval Marriages Act, 1908.

To the commanding officer of H.M.S. “ .”

I, the undersigned hereby give you notice that a marriage is intended

STATUTES RELATING TO MARRIAGE IN THE UNITED KINGDOM.

to be had (a) licence within three calendar months from the date hereof
between me and the other party named and described (that is to say):

[illegible]

Witness my hand this day of , 19 .
[signed]

I, the undersigned, hereby solemnly declare that I believe there is no impediment of kindred or alliance or other lawful hindrance to my marriage with (b) of , and that the above-named (b) has for the space of one month immediately preceding the giving of the notice of our marriage usually attended Divine worship in the church, chapel, or meeting house belonging to the (c) in (d) of , and county of .

And that I, the above-named _____, am a (e) _____ borne on the books of one of H.M. ships at sea, namely H.M.S. “_____.”

And I further declare that

(f) [I am not a minor under the age of twenty-one years and that the other party herein named and described is not a minor under the age of twenty-one years.]

[She *[or I]* the said _____ not being a widow *[or widower]* is *[or am]* a minor under the age of twenty-one years, and that the consent of whose consent to her *[or my]* marriage is required by law has been duly given and obtained thereto *[or that* there is no person whose consent to her *or my* marriage is by law required].]

And I make the foregoing declaration solemnly and deliberately, conscientiously believing the same to be true, pursuant to the provisions of the Marriage Law (Ireland) Amendment Act, 1863, and the Naval Marriages Act, 1908, well knowing that every person who shall knowingly or wilfully make and sign or subscribe any false declaration or who shall sign any false notice for the purpose of procuring any marriage under the provisions of the said Acts or of any Act therein recited shall suffer the penalties of perjury.

In witness whereof I have hereunto set and subscribed my hand this
day of _____, 19__.

(Signed)

Signed and declared by the above-named }
in the presence of . }

Officer Commanding
H.M.S. " " "

- (a) "By" "or without."
- (b) Fill in woman's name.
- (c) Here insert the church, denomination, or body of Protestant Christians to which such place of worship shall belong.
- (d) Parish or ecclesiastical district.
- (e) Fill in "officer," "seaman" or "marine."
- (f) Expunge such parts of this declaration as are not applicable—or the whole if none is applicable.

FORM D.

(To be used when marriage to be in Scotland.)

Public notice of marriage pursuant to the Marriage Notice (Scotland) Act, 1878, and the Naval Marriages Act, 1908.

Notice has this day been received by me of marriage as intended to be contracted between the following persons: that is to say:—between (a) of H.M.S. and (b) of .

All objections to a certificate being granted authorising the celebration of this marriage must be lodged with me in writing within seven days from this date, by the objector, who must appear personally to declare to the truth thereof.

(Signed)

Officer Commanding H.M.S. “ .”

His Majesty, having taken the said memorial into consideration, was pleased, by and with the advice of his Privy Council, to approve of what is therein proposed. And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary directions herein accordingly.

A. W. FITZROY.

(a) Fill in the name and surname, condition and rank, or profession of the man.

(b) Here fill in the name and surname, condition, rank, or profession, and place of residence of woman.

II. SCOTLAND.

1. SCOTS ACTS.

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ANENT THAME THAT MARYIS TWA SINDRIE WYFIS OR HUSBANDIS LEVAND
TOGETHER UNDEVORSIT.

1551, c. 19 (c).

“Item it is statute and ordanit, that quhatsumeuer persoun maryis twa sindrie wyfis or woman maryis twa sindrie husbandis leuand togidder unde-
vorsit lauchfullie contrare the aith and promeis maid at the solempnizatioun and

(c) Scots Acts Revised (ed. 1908), p. 18.

contracting of the matrimonie and swa ar of the Law periure and infame Thairfoir that the panis of periuring be execute upon thame with all rigour That is to say confiscatioun of all their gudis mouabill warding of their persounis for yeir and day and langar induring the Queens will and as infame persounis neuer habill to bruke office honour dignitie nor benefice in tyme to cum."

"ANENT THAME THAT COMMITTIS INCEST."

1567, DEC. 15, c. 15 (*t*).

"Item forsamekle as the abhominabill vile and fylthie lust of incest is swa abhominabill in the presence of God, and that the samin eternall God be his expres word hes condampnit the samin, and yit not the les the said vice is swa usit within this Realme and the word of God is in sic sort contempnit be the usaris thairof that God be his just jugementis hes occasioun to plague the Realme, quhair the said vice is committit (without God of his mercy be mair gracious and remeid be prouydit that the said vice ceis in time cuming). Thairfoir our Souerane Lord with auise and consent of my Lord Regent and thre Estates of this present Parliament statutis and ordanis that quhatsumeuer persoun or personis committeris of the [said] abhominabill cryme of incest that is to say whatsumeuer persoun or personis thay be that abusis thair body with sic person's in degre as Goddis word has expreslie forbyddin in ony tyme cuming as is contenit in the xviii cheptour of Leviticus sal be puneist [to the deith]" (*u*).

NOTE.—This Act did not create the offence, which was already punishable under the common law by penance, but merely altered the penalty (*x*).

"ANENT LAUCHFULL MARIAGE OF THE AWIN BLUDE IN DEGREIS NOT FORBYDDIN BE GODDIS WORDE."

1567 (Dec. 15) c. 16 (*y*).

"Item, Our Souerane Lord with auise and consent of my Lord Regent and thre estates of this Present Parliament, hes statute and ordanit that the holy band of mariage maid be all estatis, and sortis of man and woman, to be als lauchfull and als free as the Law of God hes permittit the samin to be done without exceptioun of person or personis And hes declairit and declairis that *secundis* (*z*) in degreis of consanguinitie and affinitie and all degreis outwith the samin contenit in the word of the eternall God (*a*), and that ar not repugnant to the said word mycht and may lauchfullie marie at all tymes sen the viii. day of Marche the yeir of God ane thousand fyue hundreth, fyftie aucht yeiris (*b*) notwithstanding any Law statute or constitutionis maid in the contrare And ratifyis and appreuis all the saidis mariageis done sen the said day And the bairnis gottin or to be gottin in sic mariage to be als lauchfull, als weill toward thair successioun to landis heritageis or ony uther liberteis as ony bairnis gottin

(*t*) Scots Acts Revised, 1908, p. 42. C. 14 in 12mo. edition.

(*u*) Words in square brackets repealed 6 Edw. 7, c. 38 (S. L. R.). The punishment of death had already been abolished by 50 & 51 Vict. c. 35, s. 56.

(*x*) Fraser, Husband and Wife (2nd ed.), 113.

(*y*) Scots Acts Revised (ed. 1908), p. 43 (c. 15 in 12mo. edition).

(*z*) *I.e.*, persons related in the second degree according to the canon law computation; 4th degree according to the civil law.

(*a*) *I.e.*, in Leviticus, c. xviii, referred to in c. 14, *supra*. The forbidden degrees were set out in detail by a Protectorate Ordinance (1649), c. 16, repealed at the Restoration (Fraser, Husband and Wife (2nd ed.), 113).

(*b*) As to prior law, *vide* Fraser, Husband and Wife (2nd ed.), 109. It extended to the fourth degree (Canon Law Computation).

in mariage and to be repute and estemit in all tyme to cum lauchfullie gottin in lauchfull mariage notwithstanding ony Lawis Statutes Constitutionis or Actes maid or to be maid in the contrare."

ANENT THE MARIAGE OF ADULTEROUS PERSONIS.

1600, c. 29 (c).

"Our Soverane Lord with advyse of the estaittis of this present Parliament decernis all mariages to be contractit heirefter be ony persones divorceit for their awin cryme and fact of adulterie frome thar lauchfull spouses with the personis with quhome they ar declarit be sentence of the ordinar Judge To have committit the said cryme and fact of adulterie To be in all tyme cumming Null and unlauchfull in thame selfis And the successioun to be gottin be such unlauchfull coniunctionis To be unhabill to succeed as airis to thair saidis Parentes."

"ACT AGAINST CLANDESTINE AND UNLAWFULL MARRIAGES."

1661, c. 246 (d).

Our Soverane Lord and the Estates of this present Parliament . . . Statuts and ordaines that whatsoever persone or persones shall heirafter marie or procure themselfis to be married in a clandestine and in orderly way *or by Jesuits Priests or any others not authorized by this Kirk (e)* That they shall be imprissoned for three moneths and beside ther said imprissonment shall pay each Nobleman one thousand pund Scots, each barron & landed gentleman one thousand merks, each gentleman and burges fyve hundreth punds, each other persone one hundreth merks And that they shall remain in prisson ay and whill they make payment of these respective penalties abovementioned which are heirby ordained to be applied to pious uses within the severall paroches wher the saids persones duells

And that the Celebrator of such marriages be banished the Kingdome never to return therein under the pain of death

Lykas his Majestie with advice forsaid Prohibits & discharges all men & women having both their ordinar residence within this Kingdome to get marriage to themselfis with others within the Kingdome of England or Ireland without proclamation of banns heir in Scotland and against the order and constitution of this Church or Kingdome under the paines following videlicet for each Nobleman so married one thousand punds for each landed Gentleman one thousand merks for each burgesse fyve hundreth punds and for each other substantialis persone fyve hundreth merks for ane yeoman one hundreth punds for each persone of inferior qualitie one hundreth merks The one halff of which penalties shall belong to the Kings Majestie the other to the paroche or paroches wher the married parties did reside And ordaines his Majesties advocat & the Procurator of the Kirk to persue before the Civile Judge the parties contraveeners of this Act or either parte thereof for payment of the penalties respective above mentioned . . .

(c) Scots Acts Revised, 1908, p. 92. In 12mo edition, 1600, c. 20.

(d) Scots Acts Revised, p. 153. In 12mo edition, 1661, Charles 2, Part I. c. 34. The omitted parts were repealed in 1906 (6 Edw. 7, c. 38).

(e) The words in italics are virtually repealed by 4 & 5 Will. 4, c. 28, s. 1 (*post*, p. 177).

STATUTES RELATING TO MARRIAGE IN SCOTLAND.

ACT AGAINST CLANDESTINE AND IRREGULAR MARRIAGES.

1698, c. 6 (*f*).

Our Sovereign Lord with advyce and consent of the Estates of Parliament for rendering more effectuell the . . . 34 Act of the first Parliament 1661 (*ante*, p. 175) Statutes and Ordains that the parties clandestinely and irregularly married contrare to the said Act 1661 Declare when required the names and designations of the Minister or person who celebrat the said clandestine or irregular marriages and of such as were Witnesses to the said marriages with Certification, that if they refuse when required the foresaid parties married shall pay each nobleman two thousand pounds, each Baron and Landed Gentleman two thousand merks, each Gentleman and Burgess one thousand pound, each other person two hundred merks to be applyed to pious uses within the parishes where the said persons dwell And furdur be imprisoned ay and while they do declare who were Celebrators of and witnesses to the said marriages and also make payment of the respective penalties above mentioned.

And for the better repressing of the said clandestine marriages it is furdur statute and ordained that over and above the pains contained in the said Act 1661 . . . against clandestine and irregular marriages the Celebrator of the said clandestine marriage shall be lyable to be summarly seized and imprisoned by any ordinar Magistrat. or Justice of Peace, and farder punishable by the Lords of His Majesties Privy Councill not only by perpetual banishment but by such pecuniall or corporall pains as the said Lords of Privy Councill shall think fit to inflict As also that the Witnesses to the said Clandestine Marriages shall be lyable each of them in the sum of ane Hundred pounds Scots toties quoties to be applied to the uses and in manner above mentioned, or if insolvent to such corporall punishment as the said Lords shall think fit to determine (*g*).

THE SCOTTISH EPISCOPALIANS ACT, 1711 (*h*).10 ANNE, c. 10 (*i*).

“ And provided likewise that no episcopal minister or ministers residing in that part of the United Kingdom called Scotland presume to marry (*k*) any persons but those whose bans have been duly published three several Lord's days in the episcopal congregations which the two parties frequent, and in the churches to which they belong as parishioners by virtue of their residence (*l*) and that upon the same pains and punishments as are already inflicted by the laws of Scotland in cases of clandestine marriages (*m*) and the ministers of the parish churches are hereby obliged to publish the said bans and in case of neglect or refusal it shall be sufficient to publish the said bans in any episcopal congregation alone any law statute or custom to the contrary notwithstanding.”

(*f*) Scots Acts Revised, p. 271.

(*g*) This Act is repealed by 4 & 5 Will. 4, c. 28 (*post*, p. 177) so far as it prohibits celebration of marriage by Roman Catholic priests, or other members not belonging to the Established Church of Scotland.

(*h*) This Act provided for the toleration and protection, upon terms, of those of the episcopal persuasion in Scotland, not being papists or popish recusants (sect. 9).

(*i*) C. 8 in the common printed editions.

(*k*) The Act repeals (by sect. 5) a Scots Act of 1695, c. 15 (12mo. ed. c. 12) against irregular baptisms and marriages (by excluded episcopalian ministers), and empowers episcopal ministers to marry without incurring any pain or penalty whatsoever. Sect. 7 is a proviso to sect. 5, imposing conditions as to episcopal marriages.

(*l*) See 4 & 5 Will. 4, c. 28, s. 2 (*post*, p. 177).

(*m*) *Vide* 1661, c. 246 (*ante*, p. 175); 1698, c. 6, *supra*.

THE MARRIAGE (SCOTLAND) ACT, 1834.

4 & 5 WILL. 4, c. 28.

An Act to amend the Laws relative to Marriages celebrated by Roman Catholic Priests and Ministers not of the Established Church, in Scotland.

[25th July, 1834.]

[Whereas an Act was passed in the Parliament of Scotland in the first session of the first Parliament of King Charles the Second, intituled "Act against clandestine and unlawful marriages" (*n*); and another Act was passed in the seventh session of the said first Parliament of King William, intituled "Act against clandestine and irregular marriages" (*o*); And whereas by the said recited Acts, or one or other of them, Roman Catholic priests, and other ministers not of the Established Church of Scotland, celebrating marriages, and persons married by such clergymen, in Scotland, are rendered liable to certain punishments, pains, and penalties: And whereas it is expedient that the said Acts should be altered and amended: be it therefore enacted, &c., that from and after the passing of this Act, so much of the said recited Acts as prohibits the celebration of marriages in Scotland by Roman Catholic priests or other ministers not belonging to the Established Church of Scotland, or imposes any fine, pain, or penalty on persons so married, or on the priests or ministers celebrating such marriages or marrying such persons, shall be and it is hereby repealed] (*p*).

So much of recited Acts as prohibits marriages by Roman Catholic priests in Scotland repealed.

2. It shall be lawful to all persons in Scotland, after due proclamation of banns there, to be married by priests or ministers not of the Established Church, and also for such priests or ministers to celebrate marriages without being subject to any punishment, pains, or penalty whatever; any thing in the said recited Acts, or in any other Act or Acts of Parliament, to the contrary notwithstanding.

Persons in Scotland may be married by priests not of Established Church.

3. [And be it enacted, that the said recited Acts shall, excepting in so far as the same have already been or are hereby repealed or altered, remain in full force, authority, and effect] (*p*).

Recited Acts to remain in force.

THE REGISTRATION OF BIRTHS, DEATHS, AND MARRIAGES (SCOTLAND) ACT, 1854.

17 & 18 VICT. c. 80.

An Act to provide for the better Registration of Births, Deaths, and Marriages in Scotland.

[7th August, 1854.]

[Whereas it is expedient that a complete and uniform system of registration of births, deaths, and marriages should be established and maintained in Scotland: be it enacted, &c.]

1. . . . Provided always, that it shall be competent for any person to register, on or before the thirty-first day of December one thousand eight hundred and fifty-five, in the registers kept and in use before the passing of this Act, any . . . marriage which shall have taken place on or before the thirty-first day of December one thousand eight hundred and fifty-four, in the same manner as if this Act had not been passed: Provided also, that] (*q*) all existing registers of . . . marriages, including all such entries as may be made as aforesaid, and all extracts and certificates from such registers, shall be and remain of the same legal force and effect in all respects as if this Act had not been passed.

Present system of registration to cease on 31st December 1854, and this Act to come into operation.

Sects. 2—11 provide for a Registrar-General and General Register Office and for officials and management of office and registers and for registration districts.

Election of registrar by parochial board.

12. . . . When there shall be a vacancy in the office of registrar, the *parish council* shall, subject to the provisions hereinbefore contained, by a majority of

(*n*) 1661, c. 246 (*ante*, p. 175).

(*o*) 1698, c. 6 (*ante*, p. 176).

(*p*) Words in brackets repealed in 1874 (37 & 38 Vict. c. 35, Stat. Law Rev.).

(*q*) Words in brackets repealed in 1892 (Stat. Law Rev.).

the votes of the members present at a meeting specially called for the purpose, elect the registrar of the parish or district (*r*); . . .

13. [*Where there is no parochial board heritors may appoint the registrar.*]

14. [*Registrar may appoint assistant.*]

Fees payable
to registrar.

17. The registrar shall be entitled to demand, in respect of registration and the other duties required to be performed by him under the provisions of this Act, the several fees herein authorised to be taken, and shall keep a correct account of all sums received by him in virtue of this Act in the course of each year, and shall, within ten days after the thirty-first day of July yearly, deliver or transmit a copy of such account up to the said thirty-first day of July, authenticated by him, to the sheriff, to be preserved in the sheriff clerk's office, and to be furnished by the sheriff to the Registrar-General, and, if required, to one of Her Majesty's Principal Secretaries of State (*s*).

Provision as
to burial
registers.

20. . . . but nothing herein contained shall . . . relieve any such proprietors from the necessity of registering deaths in the parochial registers under the provisions of this Act.

The sheriff to
superintend
registrars.

21. The sheriff of each county shall have the control and superintendence of the registrars of the several parishes and districts within such county: Provided, that where a parish shall be situated in more counties than one, such parish shall, for the purposes of this Act, be held to be within the county in which the parish church is situated.

Books and
forms to be
provided.

22. [*Register boxes to be provided.*]

23. Upon the application of the Registrar-General, there shall be furnished to him from time to time, from Her Majesty's Stationery Office, all such stationery, books, certificates, schedules, notices, and forms as shall be necessary in the execution of this Act, and as the Registrar-General shall require and direct, and the register books shall be of durable materials, and in them shall be printed upon each side of every leaf the heads of information herein required to be known and registered of . . . marriages respectively, and every page of each book shall be numbered progressively by printed numbers from the beginning to the end of the book, beginning with number one; and each such page shall be ruled and filled up according to the form given in . . . Schedule . . . (C.) hereunto annexed, and each separate entry shall be numbered at the beginning thereof with successive numbers, beginning with number one; and the Registrar-General shall furnish to the registrar of every parish or district a sufficient number of register books of births, and of register books of deaths, and of register books of marriages, and of certificates, schedules, notices, and forms.

24. [*On removal or death of registrars, register boxes, books, &c. to be delivered up to successors.*]

Registrars to
dwell in parish,
and put their
names on their
houses, and
their names to
be affixed on
doors or places
of public
worship.

25. The registrar and assistant registrar shall dwell or have a known place of business within the parish or district of which he is registrar or assistant registrar; and every registrar shall cause his name, with the addition of registrar for the parish or district for which he shall be so appointed, to be placed in some conspicuous place outside of or on or near the outer door of his own dwelling-house, or of his usual place of business if different or apart from his dwelling-house (*t*); . . .

Registration
of regular
marriages.

46. In all cases of regular marriages, . . . a copy of the said Schedule (C.), upon the solemnization of the marriage, . . . having all the information thereby required inserted therein, shall be produced to the minister solemnizing the marriage, or to the person solemnizing any marriage according to the rites and forms respectively observed by Jews and Quakers, or shall be filled up in the presence of such minister or person, and shall be signed by the parties contracting the marriage, and by the witnesses, male or female, present thereat, not being less than two, and also by the minister or person officiating, and be delivered to the parties contracting the marriage, who shall within three days thereafter either deliver or send by post such schedule to the registrar of the

(*r*) As to notifying Registrar-General of election, see 23 & 24 Vict. c. 85, s. 9.

(*s*) Sects. 18, 19 repealed in 1860 (23 & 24 Vict. c. 85).

(*t*) Rest of section repealed in 1860 (23 & 24 Vict. c. 85).

parish wherein the marriage was solemnized; and the husband, and failing the husband the wife, shall in case of failure so to deliver or send such schedule be liable in a penalty not exceeding ten pounds; and upon being received by the registrar, the particulars of such schedule shall be forthwith entered by him in the duplicate registers; and all such schedules . . . shall be transmitted . . . with the duplicate registers to the Registrar-General, for preservation in the general registry office (*u*).

47. It shall be competent to the persons intending to contract marriage to require the registrar of the parish to attend at the solemnization thereof, at any place within such parish; and such registrar is hereby required, upon a written notice of forty-eight hours given to him to that effect, to attend with the register book accordingly, and to make the proper entry therein, and for such attendance and entry the registrar shall be entitled to a fee of twenty shillings, besides the sum of sixpence for each mile which such registrar shall be obliged to travel in going from his place of abode to the place of such marriage.

Registrar to attend parties when required to register marriages.

48. In the event of any persons being convicted before any justice of the peace or magistrate of having irregularly contracted a marriage, it shall be lawful for either of the parties to such irregular marriage, and they are severally hereby required, to register such marriage in the parish in which such conviction shall have taken place; and in case of any marriage being established by a decree of declarator of any competent Court, it shall be lawful for either of the parties to the action in which such decree was pronounced to register such marriage in the parish of the domicile of such parties, or the parish of their usual residence; and the production to the registrar of an extract of such conviction or decree of declarator shall be sufficient evidence and warrant for the registration of such marriages, on payment to the registrar of a fee of twenty shillings (*x*).

Marriages of persons fined for irregular marriages, and marriages established by decree of declarator, to be registered.

49. The magistrate before whom or the clerk of Court in which any such conviction has taken place, and the clerk of Court in which any such decree of declarator has been pronounced establishing any marriage as aforesaid, shall, upon such conviction so taking place or upon such decree being so pronounced, give information to the registrar of the parish in which such conviction took place, and in case of a decree of declarator, to the registrar of the parish of the domicile, or of the parish of the usual residence of the parties to the action of declarator, by notice of the import of such conviction or decree, in the form of Schedule (K.) to this Act annexed; and any such clerk of Court failing so to do shall be liable in a penalty not exceeding forty shillings, which may be prosecuted for and recovered at the instance of the registrar (*x*).

Convictions in irregular marriages and decrees of declarator of marriages to be intimated to registrar.

50. Every registrar shall make out an account twice in every year of the number of . . . marriages which he shall have registered in the half years terminating on the last day of June and the last day of December next preceding; and it shall be lawful for the parochial board of the parish, on production of such account, to levy by assessment the sums required for payment to the registrar of the amount of his account, and such further sum as may be necessary for his remuneration . . . (*y*).

Registrars to make out account of number of marriages half-yearly, and assessment to be levied and payment made in respect thereof.

51. [*Registrars may be paid by salary.*]

52. The registrar shall furnish gratis to all persons hereby required to give information, who shall apply therefor, printed forms, setting forth the heads of the particulars required to be specified and inserted in such forms; and the Registrar-General shall cause a printed copy of section 46 of this Act, and copies also of the Schedule (C.) hereunto annexed, to be supplied to the several registrars, who shall, upon application therefor, furnish such copies to any minister at any time applying for the same (*z*), and to the registering officers of

Forms to be supplied gratis.

(*u*) Words omitted repealed in 1892 (Stat. Law Rev., as superseded by 23 & 24 Vict. c. 85, s. 15).

(*x*) These sections are modified by 19 & 20 Vict. c. 96 (*post*, p. 185).

(*y*) Words omitted repealed in 1892 (Stat. Law Rev.). As to expense of verifying accounts and expenses and remuneration of registrar, see 23 & 24 Vict. c. 85, ss. 16, 17, 18.

(*z*) Words omitted repealed in 1860 (23 & 24 Vict. c. 85, s. 15).

Registers to be kept in duplicate, and annually examined by the sheriff, and duplicate to be transmitted to the Registrar-General.

Duplicate register to supply the place of any register destroyed or become illegible.

Indexes of parish registers to be made, which may be searched.

Indexes to be kept at General Registry Office, where they may be searched.

Extracts of entries to be admissible as evidence.

the several Societies of Friends, and to the secretaries of the Jewish Synagogues, for use in the registration of marriages under this Act.

53. All the registers hereby appointed to be kept shall be kept in duplicate, and such duplicates shall be paged continuously alike, and the contents of each page of such duplicate register books shall be the same, and each page shall be signed by the registrar; and one of such duplicates shall be retained by the registrar, and the other shall be transmitted by the sheriff to the Registrar-General on or before the thirty-first day of August in each year; and the sheriff when transmitting such duplicate shall report any circumstance relating to the registers to which he may think the attention of the Registrar-General ought to be called (z).

55. If any duplicate register in the custody of the registrar shall be lost, destroyed, or mutilated, or shall have become illegible, in whole or in part, such fact shall be forthwith communicated by the registrar to the Registrar-General, who shall require the registrar immediately to transmit to him the duplicate register which shall have been mutilated or become illegible; and the Registrar-General shall thereupon present a petition to one of the Divisions of the Court of Session, setting forth the fact of the loss, destruction, mutilation, or total or partial illegibility, as the case may be, of such duplicate register, and the date of the discovery of such loss, destruction, mutilation, or total or partial illegibility of such duplicate; and the Court, on being satisfied regarding the same, and after such intimation as they may think proper, shall order such register to be corrected or completed, or a new duplicate to be made, at the sight of the Registrar-General, and such corrected or completed duplicate, or new duplicate, authenticated by the signature of the Registrar-General, shall thereupon become in all respects of the same force and validity as the original duplicate.

56. Every registrar shall forthwith make tabular alphabetical indexes of the duplicate registers in his custody, to be kept in the registrar's office; and every person shall be entitled at all reasonable hours to search the said indexes, subject to such regulations as the sheriff may prescribe, and to have an extract of any entry or entries in such registers under the hands of the registrar, on payment of the fees hereinafter mentioned, (that is to say,) for every general search the sum of two shillings, and for every search for a particular register of birth, death, or marriage, the sum of one shilling, and for every extract of any entry the sum of two shillings; and any registrar who shall refuse or neglect to make such extract for one month after being required so to do shall be liable in a penalty not exceeding ten pounds.

57. Every person shall be entitled, on payment of the fees hereinafter mentioned, to search the tabular alphabetical indexes of the duplicate registers in the custody of the Registrar-General, between the hours of ten in the morning and four in the afternoon of every day except Sunday, and to have an extract of any entry in the said duplicate registers; and for every general search of such indexes the sum of twenty shillings, and for every particular search the sum of one shilling, and for every extract of any entry the sum of two shillings, and no more, shall be paid to the Registrar-General, or such other officer as shall be appointed to receive such fees on his account: Provided, that it shall be competent to the Registrar-General to permit gratis searches to be made by or on behalf of and extracts to be given gratis to persons of whose inability to pay he shall be satisfied.

58. Every extract of any entry in the register books to be kept under the provisions of this Act, duly authenticated and signed [by the Registrar-General, if such extract shall be from the registers kept at the General Registry Office, and] by the registrar if from any parochial or district register, shall be admissible as evidence in all parts of Her Majesty's dominions, without any other or further proof of such entry (a).

59. [*Money received by Registrar-General to be accounted for.*]

(z) Words omitted repealed in 1892 (Stat. Law Rev.).

(a) The provisions as to the Registrar-General cease to have effect as from 3rd November, 1910. See 10 Edw. 7 & 1 Geo. 5, c. 32, s. 1 (*post*, p. 192).

60. Every person who shall knowingly and wilfully make or cause to be made, for the purpose of being inserted in any register of . . . marriage any false or fictitious entry, or any false statement regarding the name of any person mentioned in the register, or touching all or any of the particulars by this Act required to be registered, shall be deemed guilty of an offence, and on conviction shall be punishable by transportation for a period not exceeding seven years (b).

Penalty on giving false information.

61. Every registrar who shall refuse, or, without reasonable cause, omit to register any . . . marriage, or to make any addition to or alteration upon the register, in accordance with the provisions of this Act, shall forfeit a sum not exceeding ten pounds for every such offence.

Penalty on registrar for omitting to register.

62. Every person who shall wilfully destroy, obliterate, erase, or injure any entry, or cause to be destroyed, obliterated, erased, or injured any such register, or duplicate thereof, or any minute, notice, or certificate made or given pursuant to this Act, or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of any such register or duplicate, or any such minute, notice, or certificate, or shall wilfully insert or make or cause to be inserted or made in any such register or duplicate any false or fictitious entry of or any false statement touching any birth, death, or marriage, or shall wilfully give any false certificate, or falsify any certificate, or shall certify any writing to be an extract of any such register, knowing the same to be false or fictitious in any part thereof, shall be deemed guilty of an offence, and on conviction thereof be liable to be punished by transportation for a period not exceeding seven years (b).

Penalty for destroying or falsifying register, &c.

63 (c). If any error shall be discovered to have been committed in the entry of any . . . marriage in any such register, the person discovering the same shall forthwith give information thereof to the sheriff, and it shall be lawful for the sheriff, and he is hereby authorised and required, thereupon, or upon otherwise coming to the knowledge of such erroneous entry, to summon before him the person who made and any person concerned in the making such erroneous entry, or having knowledge regarding the same, and also any person interested in the effect of such erroneous entry, and to examine all such persons upon oath; and if the sheriff shall be satisfied that any error has been committed in any such entry, he shall, by authority in writing under his own hand, direct a corrected entry of the birth, death, or marriage in relation to which such error has been committed, and bearing the date of the correction, to be made in a separate register book, to be called "The Register of corrected Entries," and in such corrected entry reference shall be made to the depositions upon which the correction of the error has proceeded, and the sheriff shall also make or cause to be made an entry or marking upon the margin of the original entry of such birth, death, or marriage in the duplicate registers, but shall not alter the original entry, distinctly referring by volume and page and date to the entry made in "The Register of corrected Entries"; and in case the duplicate register shall have been transmitted to the Registrar-General, the sheriff shall transmit a copy of the corrected entry and relative marking, authenticated by his signature, to the Registrar-General, to be inserted in the duplicate register so transmitted; and the sheriff shall every year transmit such "Register of corrected Entries" to the Registrar-General, at the same time and in the same manner as is provided for the transmission of duplicate registers (d).

For correcting erroneous entries.

64. Provided always, that errors committed in the form or substance of any entry may be corrected according to the truth of the case before the entry is

Errors in entry may be

(b) Words omitted repealed in 1898 (Stat. Law Rev.).

(c) 18 & 19 Vict. c. 29, s. 6, requires that the register of corrected entries shall be kept in duplicate, and one of the duplicates be annually transmitted to the Registrar-General. Clerical errors in the duplicates may be corrected by district examiners (23 & 24 Vict. c. 85, s. 19). Further provision as to additions and alterations in duplicate registers made by 23 & 24 Vict. c. 85, s. 13, and as to expenses of registrar in making corrections, *ibid.* s. 17.

(d) As to correction of errors in entries made after 31st December, 1800, in registers kept and in use before 7th August, 1854, see 23 & 24 Vict. c. 85, s. 3.

- corrected before signing.
- signed; and if any correction is intended to be made by erasure or obliteration, the same shall be effected by drawing a line through the erroneous words or figures, but so as to leave the same legible; and any addition or alteration relative to such correction shall be made as near as may be to the correction, and the registrar shall affix his signature thereto.
- Recovery and application of penalties.
- 65 (e). All penalties imposed by this Act may, unless otherwise directed, be recovered by summary proceedings upon complaint in writing made by the procurator fiscal to the sheriff of the county within which such penalty shall be incurred, or to the sheriff of any county in which the person complained against may be found (f); and either upon the appearance or on the default to appear of such person it shall be lawful for the sheriff to proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the person complained against, or upon the oath of one or more credible witness or witnesses, and without any written pleadings or record of evidence, to convict the offender, and upon such conviction to decree, adjudge, and sentence him to pay the penalty incurred, and the expenses attending the conviction, and to grant warrant for imprisoning him until such penalty and expenses shall be paid (f).
66. [*Town councils of burghs to have powers of parish councils.*]
67. [*Expense of correspondence of Registrar-General relating to this Act how to be defrayed.*]
- Proclamation of banns and law of marriage not affected.
68. Nothing herein contained shall affect the proclamation of banns, or the registration thereof, as at present in use, or the law of marriage in Scotland.
69. [*Registrar-General to furnish notices of Acts required to be done to sheriffs for publication on doors of places of worship, &c.*]
- Notices may be given by post.
70. Wherever notice is required to be given by this Act, the person bound to give the notice shall be held to have sufficiently discharged himself if he shall have put into the post office, before the expiration of the period within which the notice is required to be given, a letter addressed to the person to whom and containing the particulars of which the notice is required to be given.
- Penalties not exigible if notice given.
71. No penalty imposed by this Act on parties failing to give any notice required by this Act shall be exigible, if any of the parties so required shall have given such notice.
- Parties may sign by a mark before witnesses.
72. In case of the inability to write of any person whose signature is required or necessary under this Act, it shall be lawful for such person to adhibit a cross or other mark, and being adhibited in presence of the registrar, or sheriff, or two witnesses, who shall adhibit their designations to their signatures, such mark shall be in all respects as binding and effectual as the signature of such person if capable of writing would have been.
- No penalty where failure not wilful.
73. No penalty shall be exacted in any case where it shall appear to the satisfaction of the sheriff that the party failing to comply with the provisions of this Act, in relation to the giving notices under the same, has not wilfully been guilty of such failure, but that such failure has been occasioned by unavoidable accident, or by circumstances over which he had no control, and where he has used every reasonable endeavour towards compliance with such provisions.
- Registrar-General may alter schedules.
74. It shall be lawful for the Registrar-General, with the consent of Her Majesty in Council, to diminish, from time to time, the fees hereby authorised to be taken, and to alter the schedules to this Act annexed, regard being always had to the objects and purposes of this Act, and to rendering the same more effectual; and such alteration of fees or schedules shall be published in the *Edinburgh Gazette*, and shall within fourteen days after the same shall have been issued be laid before both Houses of Parliament, or if Parliament shall not be then sitting, within fourteen days after the meeting of the then next session (g).

(e) Amended in 1855 (18 & 19 Vict. c. 29, s. 7).

(f) Words omitted repealed 1892 (Stat. Law Rev.).

(g) See Order in Council of 27th August, 1860 (Stat. R. & O. Rev. (ed. 1904), Vol. XI., Registration of Births, &c. (Scotland), p. 1).

75 (*h*). [*Compensation where keepers of registers deprived of office by operation of this Act.*]

76. The following words and expressions in this Act shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction ; (that is to say,) Interpretation of Act.

The expression "Registrar-General" shall mean the Registrar-General of births, deaths, and marriages in Scotland, for the time being, appointed and acting under this Act :

The word "Parish" shall include any division of a parish or union of parishes into a district or districts made in pursuance of this Act :

And with regard to any birth, death, or marriage herein mentioned, the words "Registrar" and "Assistant Registrar" shall mean the registrar and assistant registrar of the parish or district in which such birth, death, or marriage took place or such marriage was solemnized, celebrated, or contracted ; and the word "Register" shall mean the duplicate registers of births, deaths, and marriages to be kept and made pursuant to this Act :

The word "Sheriff" shall mean the sheriff of the county of which he is sheriff, and shall include sheriff substitutes :

The words "Procurator Fiscal" shall mean the procurator fiscal of the county or division of a county of which he is procurator fiscal :

The word "Minister" shall be taken to include ministers or pastors of Christian congregations of all denominations :

The word "County" shall include any division of a county established by law :

The word "Burgh" shall apply to a city, burgh, or town being a royal burgh, or which sends or contributes as a burgh to send a Member to Parliament, and the boundaries of all such burghs shall for the purposes of this Act be the same as are described in the Act Second and Third William the Fourth, Chapter Sixty-five :

The word "Heritors" shall mean heritors entitled to elect a schoolmaster under an Act passed in the forty-third year of the reign of His Majesty King George the Third, Chapter Fifty-four (*i*) :

The word "Occupier" shall include the guardian, master, governor, keeper, steward, house surgeon, or superintendent of every gaol, prison or house of correction, workhouse, hospital, lunatic asylum, or public charitable institution.

77. This Act shall extend only to Scotland.

Act to extend
only to
Scotland.

SCHEDULES to which this Act refers.

SCHEDULE (A.)

BIRTHS.

Sects. 23,
26, 28.

SCHEDULE (B.)

DEATHS.

(*h*) Repealed 1892 (Stat. Law Rev.).

(*i*) That Act was repealed in 1872 (35 & 36 Vict. c. 62, s. 78).

Sects. 23,
46.

SCHEDULE (C.)

in the County (or Burgh) of Edinburgh. Registered by John Smith, Registrar.															
No.	When, where, and how married.	Signatures of the Parties.	Residence.		Age.	Rank or Profession, and Relationship of Parties (if related).	Condition.			Birthplace, and when registered.	Parents'		If irregular, Date of Sentence of Conviction, or Decree of Declarator, and in what Court pronounced.	When and where registered, and Signature of Registrar.	
			Present.	Usual.			If a Widower or Widow, whether Second or Third Marriage.	Children by each former Marriage.	Living.		Dead.	Names.			Rank, Profession, or Occupation.
11	On March	William	6, High Street, Edinburgh.	Chelmsford,	32	Carpenter	Widower,	2	1	Born and	Peter	Uphol-	James	1855.	
	Third, 1855.	Hastings.	Edinburgh.	Essex.			Second			registered	Hastings,	sterer.	Brown,	March 4th.	
	At Edinburgh:						Mar-			on 1 May	deceased,		Minister of	At Edin-	
	Marriage						riage.			1822, at	and Ann	School-	High	burgh.	
	(after Banns)									Bristol.	Hastings,	mistress.	Church,		
	was solemnized between										Maiden		Edinburgh.	John	
	as according to the Rites and Ceremonies of the Established Church of Scotland.										Name			Smith,	
		Sophia Ann	4, Hamilton	4, Hamilton	20	Dressmaker	Spinster.				Born and	Payne.			Registrar.
		Mitchell.	Place, Edin-	Place, Edin-							registered	John	Butcher.	John	
			burgh.	burgh.							at Perth.	Mitchell		Hastings,	
											and	and		Witness.	
										Sarah			Jane		
											Mitchell,		Mitchell,		
											Maiden		Witness.		
											Name				
											Evans,				
											deceased.				

[The Words and Figures in *Italics* in this Schedule to be filled in as the Case may be.]

SCHEDULE (K.)

Sect. 49.

To the Registrar of the Parish [or District] of in the County [or Burgh] of . Take notice, that A.B., a justice of peace for the county of convicted C.D. of of having irregularly contracted a marriage with E.F. of ; or that the Court of Session [or other competent Court], upon the day of 18 , pronounced decree in an action of declarator of marriage before the said Court, at the instance of G.H. [pursuer's name and description], against I.K. [defender's name and description], finding that G.H. of and I.K. of had intermarried. Witness my hand, this day of one thousand eight hundred and .

[Signed by the Clerk of Court.]

THE MARRIAGE (SCOTLAND) ACT, 1856 (*k*).

19 & 20 VICT. c. 96.

An Act for amending the Law of Marriage in Scotland.

[29th July, 1856.]

Whereas it is expedient to amend the law touching marriages in Scotland: Be it therefore enacted, &c.

1. After the thirty-first day of December One thousand eight hundred and fifty-six, no irregular marriage contracted in Scotland by declaration, acknowledgment, or ceremony shall be valid, unless one of the parties had at the date thereof his or her usual place of residence there, or had lived in Scotland for twenty-one days next preceding such marriage (*l*); any law, custom, or usage to the contrary notwithstanding.

Declaring under what circumstances marriages solemnized in Scotland shall be valid.

2. If any persons who shall have contracted an irregular marriage in Scotland after the day and year aforesaid shall within three months thereafter present a joint application for a warrant to register such marriage to the sheriff or sheriff substitute of the county where such marriage was contracted, and shall prove to his satisfaction that they have been married to one another, and that one of them had lived in Scotland for twenty-one days next preceding such marriage, or had his or her usual residence in Scotland at the date thereof, such sheriff or sheriff substitute shall certify the same under his hand, and shall thereupon grant warrant to the registrar of the parish or burgh in which the marriage was contracted, who shall forthwith enter such marriage in the register of marriages kept by him, in terms of the Registration of Births, Deaths and Marriages (Scotland) Act, 1854 (*m*); and any certified copy of such entry, signed by such registrar, and which such registrar is hereby required and empowered to give, charging for the same the sum of five shillings, shall be received in evidence of such marriage, and of such residence or of such previous living twenty-one days in Scotland, in all Courts in the United Kingdom and Dominions thereunto belonging.

Certificated copy of entry by sheriff depute that parties were married, and that one of them lived in Scotland twenty-one days preceding such marriage, conclusive as to its validity.

3. It shall not be lawful, after the date aforesaid, to convict any parties of having irregularly contracted marriage, unless there shall be adduced to the justice or justices of the peace, magistrate or magistrates, before whom the complaint against such parties has been brought, sufficient proof, other than the acknowledgment of such parties, that one of them had at the date thereof his or her usual residence in Scotland, or had lived in Scotland for twenty-one

No conviction for, nor registration of, irregular marriage, without proof of previous residence.

(*k*) Passed at the instance of Lord Brougham to put an end to Gretna Green marriages.

(*l*) The period of twenty-one days under this section is computed in accordance with Scots law. The days are computed from midnight to midnight, and it has been held that the period from 4 a.m. on July 1st to 11.12 a.m. on July 21st was, on this computation, only nineteen days and two half-days, and not twenty-one days (*Lawford v. Davies* (1878), 4 P. D. 61).

(*m*) *Ante*, p. 177.

days next preceding such marriage; nor shall it be lawful for any registrar of births, deaths, and marriages in Scotland to register any marriage under the provisions of the said recited Act, on the production of an extract of a conviction for having irregularly contracted marriage, unless such conviction shall bear that such sufficient proof as aforesaid was so adduced.

THE EVIDENCE FURTHER AMENDMENT (SCOTLAND) ACT, 1874.

37 & 38 VICT. c. 64.

Sect. 3. Nothing in this Act contained shall be construed to alter or affect the law of Scotland in force at and prior to the passing of this Act ⁽ⁿ⁾ (7th Aug. 1874) relating to the proof of a promise of marriage in any action of declarator of marriage founded upon promise of marriage *cum copula subsequenti* ^(o).

THE MARRIAGE NOTICE (SCOTLAND) ACT, 1878.

41 & 42 VICT. c. 43.

An Act to encourage Regular Marriages in Scotland.

[8th August, 1878.]

Whereas it is expedient, in order to encourage the celebration of regular marriages in that part of the United Kingdom called Scotland, that provision should be made for the celebration of such marriages after notice to registrars:

Be it enacted . . . as follows:—

In this Act—

- (1.) “Registrar” means the registrar of births, deaths, and marriages for a parish or district under the Registration of Births, Deaths, and Marriages in Scotland Act, 1854 ^(p), and the Acts amending the same:
- (2.) “Registrar-General” means the Registrar-General of births, deaths, and marriages in Scotland appointed under the said Act, and the Acts amending the same:
- (3.) “Parish” and “district” have the meanings attached to them respectively in the said Act, and the Acts amending the same.

Interpreta-
tion of terms.

Short title.

2. This Act may be cited for all purposes as the Marriage Notice (Scotland) Act, 1878.

Commence-
ment of Act.

3. This Act shall commence and come into operation on the first day of January One thousand eight hundred and seventy-nine, which date is herein-after referred to as the commencement of the Act.

Ministers, &c.
may celebrate
marriages on
registrar’s
certificate.

4. From and after the commencement of this Act it shall be lawful for ministers, clergymen, or priests in Scotland to celebrate marriages therein after such publication of notice of an intention to marry as is hereinafter prescribed, and upon production to such minister, clergyman, or priest of a certificate or certificates of such publication as hereinafter prescribed; and any marriage so celebrated shall be deemed to be a regular marriage as if it had been celebrated by such minister, clergyman, or priest after the proclamation of banns of marriage according to the mode now in use.

Regarding
Quakers and
Jews.

5. Notwithstanding anything contained in this Act, the Society of Friends, commonly called Quakers, and the persons professing the Jewish religion, may contract and solemnize marriage according to the usages of the said Society and of the said persons respectively, and every such marriage is hereby

⁽ⁿ⁾ See *Longworth v. Yelverton* (1867), L. R. 1 Sc. & Div. 218.

^(o) Sect. 2 of the Act renders parties and their husbands and wives competent witnesses in proceedings instituted in consequence of adultery, but not liable to be asked nor bound to answer questions tending to prove that the deponent has committed adultery, unless, &c.

^(p) 17 & 18 Vict. c. 80.

declared and confirmed as a regular marriage, provided that the parties to such marriage be both of the said society or both persons professing the Jewish religion respectively; provided also, that notice to the registrar of intention to marry shall have been given, and his certificate shall have issued in manner hereinafter provided.

6. From and after the commencement of this Act a registrar's certificate of the publication of a notice of marriage in the manner provided for by this Act shall, for all purposes of law, save as hereinafter provided, be of the same force and effect as a certificate granted by a session clerk or other proper officer for granting the same of the due proclamation of banns of marriage under the law in force before the commencement of this Act.

Registrar's certificate to be equivalent to certificate of proclamation of banns.

7. In every case of persons residing in Scotland intending that a regular marriage shall be contracted between them in Scotland without the proclamation of banns, each of such persons shall, on or about the same date, give notice of the intended marriage to the registrar of the parish or district in which he or she shall have resided for a period of not less than fifteen clear days previous to the giving of such notice, in the form as nearly as may be set forth in the Schedule A. annexed to this Act; provided that when both of such persons reside within the same parish or district a single notice shall suffice.

Notice of intended marriage may be given to registrars.

8. On the receipt of a notice of an intended marriage, along with the sum of one shilling and sixpence, the registrar, being satisfied that the notice is conformable to the requirements of this Act, shall forthwith enter the particulars set forth in the notice in "The Marriage Notice Book" hereinafter mentioned, and shall on the same day post or put up in a conspicuous and accessible place on the door or outer wall of his office, a public notice of the intended marriage, in the form as nearly as may be set forth in the Schedule B. annexed to this Act, and shall keep the same so posted or put up for seven consecutive days thereafter.

Duties of registrars on receipt of a notice of marriage.

The marriage notice book shall be open at all reasonable times to any person desirous of inspecting the same upon payment of one shilling.

9. The registrar, having complied with the requirements of this Act, shall, on the expiration of seven clear days after the receipt of the notice of an intended marriage, in the event of no objection to the marriage appearing on the face of such notice, or being stated to him as hereinafter provided for, and upon payment of a fee of one shilling, grant to the person who gave the notice, or to any person authorised by the person who gave the notice, a certificate of the due publication thereof, hereafter in this Act referred to as the registrar's certificate, as nearly as may be in one of the forms set forth in Schedule C. annexed to this Act, and shall therein set forth whether any objection had been offered to such intended marriage.

Registrar to grant certificate.

10. The registrar shall disregard all objections to an intended marriage not appearing on the face of the notice, unless—

Provisions as to objections to intended marriages.

1. They shall be stated prior to the issuing of the certificate of publication:
2. They shall be stated in writing subscribed by the person taking the same:
3. The person taking the same shall appear personally to lodge the same with the registrar, and shall in his presence make and subscribe a declaration as nearly as may be in the form set forth in Schedule D. annexed to this Act, which the registrar shall endorse on the written statement of objections.

And with regard to objections, timely and duly stated as above provided, the following provisions shall have effect; that is to say,

- (a) Where the objection is that the persons intending to contract marriage, or either of them, had not resided fifteen clear days within the parish or parishes or districts or district before giving notice; or that such persons are wrongly named or described in the notice, or that either of them is so wrongly named or described; or that the notice is otherwise inaccurate in any detail; and generally where the objection does not set forth a legal impediment to a marriage between such persons, but relates to some formality or statutory requirement merely, the registrar shall suspend the issuing of his certificate, and shall consider the objection, and make such inquiry thereanent as he shall see fit, and

report thereon as soon as may be to the sheriff or sheriff substitute of the county in which his office is situated, who shall, on such report, direct the notice to be amended and a certificate to be granted thereon without republication thereof, if he shall see fit; or to be cancelled, if he shall see fit, in which case it shall be competent for the persons intending to contract marriage to give notice de novo of their intended marriage:

- (b) Where the objection is that the persons intending to contract marriage are within the forbidden degrees of consanguinity or affinity, or are both or either of them already married, or are both or either of them not of a marriageable age, or are from any other legal incapacity disqualified to give such consent as is necessary for marriage; and generally where the objection sets forth any legal impediment to a marriage between them, the registrar shall suspend the issuing of his certificate until there shall be produced to him a certified copy of a judgment of a competent court of law to the effect that the parties are not in respect of the said objection disqualified from contracting such marriage.

Certificates of proclamation of banns and of notice to registrars to be of equal authority.

11. For the purposes of this Act a certificate from a session clerk of the due publication of banns, and a registrar's certificate granted under this Act, shall be of equal authority in authorising a minister, clergyman, or priest in Scotland to celebrate a regular marriage, and such marriage may be celebrated upon the production either of a certificate or certificates of due proclamation of banns, or of a registrar's certificate or registrar's certificates applicable to both parties, or a certificate of due proclamation of banns in the case of one of the parties, and of a registrar's certificate in the case of the other: Provided always, that whenever a marriage shall not take place within three months of the date of such registrar's certificate as aforesaid, such certificate shall be utterly void: And provided further, that no minister of the Church of Scotland shall be obliged to celebrate a marriage not preceded by due proclamation of banns.

Penalties for celebrating marriages without certificates.

12. Any person otherwise entitled to celebrate a marriage who shall celebrate a marriage in Scotland with a religious ceremony without having produced or exhibited to him a certificate or certificates of the due proclamation of banns or a registrar's certificate or registrar's certificates applicable to both parties, or a certificate of due proclamation of banns in the case of one of the parties and a registrar's certificate in the case of the other, shall be guilty of an offence under this Act, and shall on conviction thereof be liable to a penalty not exceeding fifty pounds.

Offences under this section may be prosecuted before the sheriff or sheriff substitute under the provisions of the Summary Procedure Act, 1864, but only at the instance of the procurator fiscal.

Issuing of a certificate otherwise than in terms of this Act to be an offence.

13. A registrar who shall wilfully grant a registrar's certificate to any person, without complying with all the requirements of this Act in regard to the conditions on which and the time when the same may be granted, shall be guilty of an offence under this Act, and shall on conviction be liable to a fine not exceeding twenty-five pounds or to be imprisoned for a period not exceeding one month, and to be deprived of his office.

Offences under this section may be prosecuted before the sheriff or sheriff substitute under the provisions of the Summary Procedure Act, 1864, at the instance of the procurator fiscal of the county.

False declarations, &c. under this Act to be punished as perjury.

14. Every person who shall wilfully make or sign any false declaration, or sign or give any false notice of an intended marriage, or who shall wilfully state any false objection to a marriage, or wilfully make any false declaration relative to an objection to a marriage under the provisions of this Act, shall be deemed in law to be guilty of the crime of perjury, and shall on conviction suffer the penalties attached by law to the crime of perjury.

Registrars to be provided with books, &c.

15. The Registrar-General shall, on or before the commencement of this Act, and thereafter from time to time as may be necessary, furnish or cause to be furnished to every registrar of a parish or district in Scotland,—(1) a book to be called "The Marriage Notice Book," prepared in such form as the Registrar-General, having regard to the form of notice prescribed by this Act, shall see fit; and (2) such a number as he shall think sufficient and necessary of forms

of notice and of public notice of intended marriages, and of certificates and of all other forms necessary to be supplied to the registrars for the purposes of this Act, printed on paper of such shape, size, and quality as the Registrar-General shall think most convenient for the purposes of this Act and the service of his department, and the expenses of providing and printing the same shall be defrayed in the manner provided in the Registration of Births, Deaths and Marriages (Scotland) Act, 1854 (*q*).

The Registrar-General may, with the approval of one of Her Majesty's Principal Secretaries of State (*r*) from time to time prescribe rules for the discharge of their duties by registrars under this Act, and as to the hours during which they shall be bound to give attendance for the purposes of this Act, and a copy of all such rules shall be laid before both Houses of Parliament within six weeks after the same are approved of, or if Parliament be not then sitting, within one month of the beginning of the next session of Parliament.

16. Any person unable to write may duly subscribe any notice, declaration, or other writ under this Act, by adhibiting thereto a cross or other mark in the presence of the registrar, or two witnesses, provided the registrar or witnesses shall duly subscribe a declaration relative to such cross or mark as having been so adhibited by such person in their presence.

Persons unable to write may sign by a mark.

17. The schedules to this Act, and all directions therein contained or specified, or thereto appended, shall be of the same force and effect as if the same were enacted in the body of this Act.

The schedules to be part of the Act.

18. Nothing contained in any statute, law, or custom shall prevent the Church of Scotland as by law established from altering the existing regulations as to proclamation of banns of marriage, and in particular from shortening to any period not less than fifteen clear days the period of residence required in order to such proclamation.

As to alteration of regulations for proclamation of banns.

SCHEDULE A.

Sects. 7, 17.

FORM No. 1.

[Applicable to the case of notices by parties residing in different parishes or districts, or giving separate notices.]

NOTICE OF MARRIAGE.—(Pursuant to the Marriage Notice (Scotland) Act, 1878.)

To the registrar of the parish (or district) of _____ in the county of _____.

I [*here insert the name of the person giving notice*] give you notice that I and the other person herein named are about to contract marriage; (that is to say),

Name and Surname.	Condition (<i>s</i>).	Rank or Profession.	Age.	Dwelling Place.	Parish [<i>or</i> District] and County in which Parties respectively dwell.

And I solemnly declare that I believe there is no impediment of consanguinity, or affinity, or of age, or other lawful hindrance to the said marriage, and that I have had my usual place of abode and residence for the space of fifteen days

(*q*) 17 & 18 Vict. c. 80 (*ante*, p. 177).

(*r*) Now of the Secretary for Scotland (48 & 49 Vict. c. 61, s. 5, Sched., Part I.).

(*s*) State whether the person is a bachelor or spinster, widower or widow.

immediately preceding the date of this notice within the above-mentioned parish (*or* district) of .

And this I declare, knowing that if the declaration is false I expose myself to the penalties of perjury. In witness whereof I have hereunto set and subscribed my hand, this day of , 18 . [Signature.]

Subscribed and declared by the above-named in the presence of us, the undersigned householders in the above-mentioned parish (*or* district), who declare that we believe the statements contained in this notice to be true.

A. B. [*name and designation*] Witness.
C. D. [*name and designation*] Witness.

N.B.—The schedule must set forth all the particulars indicated in regard, first, to the person giving the notice, and second, to the person with whom the person giving the notice intends to contract marriage.

FORM NO. 2.

[*Applicable to the case of parties residing in the same parish or district and giving a single notice.*]

NOTICE OF MARRIAGE.—(*Pursuant to the Marriage Notice (Scotland) Act, 1878.*)

To the registrar of the parish (*or* district) of in the county of .

We [*here insert the names of the persons giving notice*] give you notice that we the persons herein named are about to contract marriage ; (that is to say),

Name and Surname	Condition (<i>t</i>).	Rank or Profession.	Age.	Dwelling Place.	Parish [<i>or</i> District] and County in which Parties dwell.

And we solemnly declare that we believe there is no impediment of consanguinity, or affinity, or of age, or other lawful hindrance to the said marriage, and that we have had our usual place of abode and residence for the space of fifteen days immediately preceding the date of this notice within the above-mentioned parish (*or* district) of .

And this we declare, knowing that if the declaration is false we expose ourselves to the penalties of perjury. In witness whereof we have hereunto set and subscribed our hands, this day of , 18 . [Signatures.]

Subscribed and declared by the above-named in the presence of us, the undersigned householders in the above-mentioned parish (*or* district), who declare that we believe the statements contained in this notice to be true.

A. B. [*name and designation*] Witness.
C. D. [*name and designation*] Witness.

(*t*) State whether the person is a bachelor or spinster, widower or widow.

SCHEDULE B.

Sects. 8, 17.

PUBLIC NOTICE.

(Pursuant to the Marriage Notice (Scotland) Act, 1878.)

Notice has this day been received at this office of marriage as intended to be contracted between the following persons; that is to say,

Between

I.

and

Between

II.

A. B. [*here give name and surname, condition, rank, or profession, and place of residence of intending husband*], and

C. D. [*here give name and surname, condition, rank, or profession, and place of residence of intending wife*].

E. F. [*here insert same particulars as above*], and

G. H. [*here insert same particulars as above*] (*u*).

All objections to certificates being granted authorising the celebration of these marriages, or any of them, [*or of this marriage, when there is only one notice,*] must be lodged with the registrar in writing within seven days from this date by the objector, who must appear personally to declare to the truth thereof.

(Signed)

M. N., Registrar.

[Date of Notice.]

SCHEDULE C.

Sects. 9, 17.

REGISTRAR'S CERTIFICATE.

(Pursuant to the Marriage Notice (Scotland) Act, 1878.)

FORM No. 1.

[Applicable to the case of the parties residing in different parishes or districts.]

I [M. N.] registrar of hereby certify that on the day of 18 A. B. [*here give name, surname, condition, rank, or profession, and place of residence of A. B.*], duly gave notice to me of his [*or her*] intended marriage to C. D. [*give name, surname, condition, &c. of C. D.*], that all the requirements of law in respect of such notice, so far as the said A. B. is concerned, have been complied with, and no objections stated [*or, written statements of objections lodged with me, as the case may be*].

Certified by me the said M. N., this

day of

(Signed)

M. N., Registrar.

FORM No. 2.

[Applicable to the case of the parties residing in the same parish or district.]

I [M. N.] registrar of hereby certify that on the day of 18 A. B. [*here give name, surname, condition, rank, or profession, and place of residence of A. B.*], and on the day of 18, C. D. [*here give name, surname, condition, rank, or profession, and place of residence of C. D.*] duly gave notice to me of their intention to contract marriage with each other, and that all the requirements of law in respect of such notices have been complied with, and no objections stated [*or, written objections lodged with me, as the case may be*].

Certified by me the said M. N., this

day of

(Signed)

M. N., Registrar.

SCHEDULE D.

Sects. 10, 17.

I hereby solemnly declare that the facts as stated by me in the written statement of objections to the marriage intended between A. B. and C. D., on which this declaration is indorsed, are true to the best of my knowledge and

(*u*) One public notice in this form may be made to include all the notices of marriage received at the office in the same day.

belief, and I make this declaration knowing that if the declaration is false I expose myself to the penalties of perjury.

(Signed by) P. Q., Objector.
I certify that this declaration was made before me and subscribed in my presence this day of 18 in my office. M. N., Registrar.

THE FOREIGN MARRIAGE ACT, 1892 (*vide ante*, p. 119).

THE MARRIAGE WITH FOREIGNERS ACT, 1906 (*vide ante*, p. 158).

THE DECEASED WIFE'S SISTER MARRIAGE ACT, 1907 (*vide ante*, p. 162).

THE NAVAL MARRIAGES ACT, 1908 (*vide ante*, p. 163).

THE REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES
(SCOTLAND) AMENDMENT ACT, 1910.

10 EDW. 7 & 1 GEO. 5, c. 32.

Substitution
of seal for
signature of
Registrar-
General for
Scotland.

1. So much of section fifty-eight of the Registration of Births, Deaths and Marriages (Scotland) Act, 1854 (*v*), as requires extracts of entries which shall be admissible as evidence to be signed by the Registrar General if such extracts shall be from the registers kept at the General Registry Office, shall cease to have effect, and in lieu thereof it is hereby provided that the Registrar General shall cause to be made a seal of the said General Registry Office, and the Registrar General shall cause to be sealed or stamped therewith all extracts of entries given in the said office; and all extracts of entries purporting to be sealed or stamped with the seal of the said General Registry Office shall be deemed to be duly authenticated by the Registrar General, and the provisions of the said section shall apply thereto as fully as if such authenticated extracts were signed by the Registrar General.

Short title,
construction,
and com-
mencement.

2.—(1) This Act may be cited as the Registration of Births, Deaths and Marriages (Scotland) Amendment Act, 1910, and may be cited with the Births, Deaths and Marriages (Scotland) Acts, 1854 to 1860, and this Act and the Registration of Births, Deaths and Marriages (Scotland) Act, 1854, shall be construed as one Act.

(2) This Act shall come into operation on the expiration of three months from the passing thereof. (August 3rd, 1910.)

III. IRELAND.

I. ACTS OF THE IRISH PARLIAMENT.

	PAGE
28 Hen. 8, c. 2	192
33 Hen. 8, c. 6	193
2 Eliz. c. 1, s. 2	193
12 Geo. 1, c. 3, s. 4	194

II. ACTS OF THE PARLIAMENT OF THE UNITED KINGDOM.

51 Geo. 3, c. 37 (E. I.)	<i>ante</i> 71
4 Geo. 4, c. 86, s. 6 (Banns)	194
5 & 6 Will. 4, c. 54 (E. I.)	<i>ante</i> 81
7 & 8 Vict. c. 81	194
8 & 9 Vict. c. 54, s. 5	215
9 & 10 Vict. c. 72	215
19 & 20 Vict. c. 119, s. 7	<i>ante</i> 106
23 & 24 Vict. c. 18	<i>ante</i> 115
26 Vict. c. 27	217
26 & 27 Vict. c. 90 (Registration)	222
33 & 34 Vict. c. 110 (part)	227
34 & 35 Vict. c. 49 (part)	233
35 & 36 Vict. c. 10	<i>ante</i> 117
36 & 37 Vict. c. 16	235
55 & 56 Vict. c. 23 (Foreign Marriage)	<i>ante</i> 119
6 Edw. 7, c. 40 (Marriage with Foreigners)	<i>ante</i> 158
7 Edw. 7, c. 47 (Deceased Wife's Sister)	<i>ante</i> 162
8 Edw. 7, c. 26 (Naval Marriages)	<i>ante</i> 163

(*v*) *Ante*, p. 180.

28 HEN. 8, c. 2 (1537).

“An Act of succession of the King and Queen Anne.”

Sect. 2. And furthermore, sithence many inconveniences have fallen, as well within this your said land of Ireland as in others by reason of marrying within the degrees of marriage prohibited by God's laws, that is to say, the son to marry the mother or the step-mother, the brother the sister, the father his sonne's daughter, or the son to marry the daughter of his father procreate and born by his step-mother, or the son to marry his aunt being his father's or mother's sister, or to marry his uncle's wife, or the brother to marry the brother's wife, or any man to marry his wife's daughter or his wife's sonne's daughter or his wife's daughter's daughter or his wife's sister: which marriages albeit they be plainly prohibited and detested by the lawes of God, nevertheless at som times they have proceeded under colour of dispensations by man's power, which is but usurped and of right ought not be graunted, admitted or allowed.

33 HEN. 8, c. 6(x) (1540).

An Act for Marriages.

* * * * *

“From the first day of July last past in the year of our Lord 1540, all and every such marriage as within this Church of Ireland hath or shall be so contracted between lawfull persons, as by this Act we declare all persons to be lawfull that are not prohibited by God's law to marry, such marriages being contracted in the face of the Church, and consummate with bodily knowledge or fruit of children shall be by authoritie of this present Parliament aforesaid deemed, judged and taken to be lawfull, good, just and indissoluble notwithstanding any pre-contract or pre-contracts of matrimonie not consummate with bodily knowledge which either of the persons so married or both shall have made with any other person or persons before the time of contracting that marriage which is solemnized or consummate, or whereof such fruit is ensued or may ensue as afore. And notwithstanding any dispensation, prescription, law or other thing granted or confirmed by Act or otherwise. And that no reservation or prohibition (God's law except) shall trouble or impeach any marriage without the Levitical degrees(y). And that no person of what estate, degree or condition soever he or shee be, shall after the first day of the moneth of July aforesaid be admitted in any of the spiritual courts within this the King's land of Ireland or any other his Grace's lands and dominions to any proces, pleas, or allegations contrary to this Act.”

2 ELIZ. c. 1 (1560).

An Act restoring to the Crown the auncient Jurisdiction over the State Ecclesiastical and Spirituall and abolishing all forreine Power repugnant to the same.

Sect. 2. “so much only of one Act or Statute made in a Parliament begun at Dublin the 13th of June in the 33rd year of the raign of your said dead father King Henry the Eighth and after proroged, adjourned and continued as by the rolls of the said Parliament more at large appeareth, intituled an Act for marriage as doth touch and concern degrees of consanguinitie may from henceforth likewise stand and be revived and remain in full force and strength, to all intents and purposes: any thing in this said Act of repeal(z) before mentioned, or other matter or cause to the contrary notwithstanding.”

(x) Repealed in general terms 3 & 4 Ph. & M. c. 8 (Ir.), but revived by 2 Eliz. c. 1 (I.), as to so much only as concerns degrees of consanguinity. Doubts as to whether the provisions relating to pre-contract were removed by 12 Geo. 1, c. 3, s. 4 (*post*, p. 194).

(y) Lev. c. xx.

(z) 3 & 4 Ph. & M. c. 8.

12 GEO. 1, c. 3 (1725).

An Act to prevent marriages by degraded clergymen and popish priests, and for preventing marriages consummated being avoided by pre-contracts, and for the more effectual punishing of bigamy.

Whereas clandestine marriages are for the most part celebrated by popish priests and degraded clergymen, to the manifest ruin of several families within this kingdom: for remedy thereof be it enacted, &c.

1. (a) . . . If any popish priest or reputed popish priest or person pretending to be a popish priest, or any degraded clergyman, or any layman pretending to be a clergyman of the Church of Ireland as by law established, shall after the 25th day of April in the year of our Lord 1726 celebrate or take upon him to celebrate any marriage between two protestants, or between a protestant or reputed protestant and a papist, such popish priest or reputed popish priest, and such degraded clergyman and layman pretending to be a clergyman shall be and is hereby declared to be guilty of felony, [and shall suffer death as a felon without benefit of the clergy or of the statute] (b).

Act amended by 33 & 34 Vict. c. 110, ss. 32, 33, 38—40, *post*.

Sect 4. And whereas some doubts have arisen whether marriages consummated by carnal knowledge can be avoided by pre-contracts without consummation, which has been the ground of many vexatious suits: for remedy whereof and to prevent all doubts concerning the same for the future, be it enacted and declared that no contract of marriage only, not consummated by the carnal knowledge of the parties, shall be of any force towards making void a subsequent marriage consummated by such carnal knowledge.

THE MARRIAGE OF LUNATICS ACT.

1813, 51 GEO. 3, c. 37.

Ante, p. 71.

4 GEO. 4, c. 86.

Ss. 5, 6 empower archbishops and bishops of the Church of Ireland to make provision for parishes not having a church fit for divine service and not united to an adjoining parish.

THE MARRIAGES (IRELAND) ACT, 1844.

7 & 8 VICT. c. 81.

An Act for Marriages in Ireland; and for registering such Marriages (c).
[9th August, 1844.]

[Whereas it is expedient to amend the law of marriages in Ireland, and to provide the means for a register of the marriages of Her Majesty's subjects in that part of the United Kingdom (d).]

(a) So much as exclusively affects a Roman Catholic priest celebrating the marriages therein specified was repealed in 1833 (3 & 4 Will. 4, c. 102, s. 1).

(b) Death penalty abolished in 1842 (5 & 6 Vict. c. 28, s. 1), and transportation for seven years substituted. For present punishment, see sect. 1 of the Penal Servitude Act, 1891 (54 & 55 Vict. c. 69).

(c) Amended and extended by 26 Vict. c. 27, and 36 Vict. c. 16 (the Marriage Law (Ireland) Amendment Acts, 1863 (*post*, p. 217) and 1873) (*post*, p. 222).

(d) Words in brackets repealed.

1. After the thirty-first day of March in the year One thousand eight hundred and forty-five, all the rules prescribed by the Rubrick concerning the solemnizing of marriages shall continue to be duly observed, except as hereinafter provided, by every person in Holy Orders of the United Church of England and Ireland (*e*) who shall solemnize any marriage in Ireland: Provided always, that the giving of notice to the registrar and the issue of the registrar's certificate for marriage without licence, as hereinafter mentioned (*f*), may be used and shall stand instead of the publication of banns, to all intents and purposes, where no such publication shall have been made; and every person in Holy Orders of the United Church of England and Ireland shall be bound to solemnize marriage on production of such certificate, in like manner as he is required to do by any law or canon now in force, after due publication of banns, so nevertheless that the church wherein any marriage according to the rites of the United Church of England and Ireland shall so be solemnized, shall be within the district of the registrar by whom such certificate as aforesaid shall have been issued (*g*).

After 31st of March, 1845, all rules prescribed by the Rubrick to continue to be observed.

Marriages shall be solemnized on production of registrar's certificate.

2. Nothing in this Act contained shall affect the right of the Archbishop of Armagh and his successors, and his and their proper officers, to grant special licences to marry at any convenient time or place (*h*), or, except as hereinafter provided, the right of any surrogate or other person now having authority to grant licences for marriage; provided that no surrogate or other person now having authority to grant licences for marriages shall grant any licence for marriage, not being a special licence, until seven days after notice shall have been given by one of the parties, who shall have resided for not less than seven days then next preceding in the parish named in that notice, under his or her hand, in the form of Schedule A. to this Act annexed, or to the like effect, to such surrogate or other person having authority to grant licences as aforesaid, which notices he shall file and keep with the records of his office, and he shall also forthwith enter a true copy of such notices fairly in a book to be for that purpose furnished to him by the Registrar-General hereinafter mentioned, to be called "The Marriage Notice Book," which book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same; and such surrogate or other person shall forthwith send a copy of such notice to the incumbent or incumbents of the parish or parishes in which the parties intending marriage dwell; and for entering every such notice the surrogate or other person shall be entitled to have a fee of one shilling, over and above the accustomed fee for granting the licence; and after the said thirty-first day of March no person applying for any such licence shall be required to give any security by bond or otherwise before the grant of such licence; and whenever a marriage shall not be had within three calendar months after the notice shall have been so given to the surrogate or other person as aforesaid, the notice, and any licence which may have been granted thereupon, shall be utterly void (*i*).

Nothing herein to affect the right of granting special licences.

Notice to be given to surrogate before licence.

Entry of notices.

Fee for entry.

No security required before granting licence.

Notice void after three months.

3. Nothing in this Act contained shall affect any marriages by any Roman Catholic priest which may now be lawfully celebrated, nor extend to the registration of any Roman Catholic chapel, but such marriages may continue to be celebrated in the same manner and subject to the same limitations and restrictions as if this Act had not been passed.

Roman Catholic marriages not affected.

4. Marriages between parties, both of whom are Presbyterians (*k*), may be solemnized according to the forms used by Presbyterians, either by the licence of a Presbyterian minister, or by publication of banns, as hereinafter respectively mentioned, in meeting houses to be certified as hereinafter mentioned,

Marriages between parties, one or both of whom are Presbyterians, may be

(*e*) The members of this now disestablished Church are called "Protestant Episcopalians." See 33 & 34 Vict. c. 110, s. 4 (*post*, p. 227).

(*f*) Sect. 16 (*post*, p. 198).

(*g*) As to solemnization in the disestablished Protestant Episcopal Church, see 33 & 34 Vict. c. 110, ss. 32, 33 (*post*, p. 228).

(*h*) For the extension of the right to grant special licence, see 33 & 34 Vict. c. 110, s. 37 (*post*, p. 230), and 34 & 35 Vict. c. 49, s. 21 (*post*, p. 233).

(*i*) See 9 & 10 Vict. c. 72, s. 3 (*post*, p. 216).

(*k*) One party only need be a Presbyterian (36 & 37 Vict. c. 16, s. 1).

solemnized in
certified
meeting
houses.

Banns to be
published in
cases where
both of the
parties to be
married are
members of
Presbyterian
congrega-
tions.

Notice of the
names, places of
abode, and time
of residence of
the parties to be
given to the
minister six
days before
publication
of banns.

Each pres-
bytery to
appoint
ministers to
certify meet-
ing houses.
Registry
thereof.

between the hours of eight in the morning and two in the afternoon, with open doors, and in the presence of two or more credible witnesses; and marriages between parties, of whom one only is a Presbyterian, may be solemnized according to the same forms, by such licence of a Presbyterian minister, in such meeting houses, between the same hours, with open doors, and in the presence of two or more credible witnesses; provided that in either case there be no lawful impediment to the marriage of such parties.

5. After the said thirty-first day of March, in every case in which a marriage shall be proposed to be solemnized by a Presbyterian minister between two Presbyterians, otherwise than by licence, banns of matrimony shall be published by or in the presence of a Presbyterian minister in the Presbyterian meeting house, certified as hereinafter is mentioned, frequented by the congregation of which the parties to be married shall be members, upon three Sundays preceding the solemnization of the marriage, during the time of Divine Service, and any such marriage by a Presbyterian minister shall be solemnized in such meeting house, and not elsewhere; and whenever it shall happen that the parties to be married by a Presbyterian minister shall be members of different congregations the banns shall in like manner be published in the certified Presbyterian meeting house frequented by the congregation of which each of the parties to be married shall be a member; and in every such last-mentioned case of publication of banns the Presbyterian minister by or in whose presence such banns shall be published shall, in writing under his hand, certify the publication thereof; and any such marriage by a Presbyterian minister shall be solemnized in one of the certified Presbyterian meeting houses where such banns shall have been published, and in no other place whatsoever; and before such marriage shall be solemnized the certificate of the Presbyterian minister by whom or in whose presence the banns shall have been published in the other certified meeting house shall be delivered to the Presbyterian minister solemnizing such marriage.

6. No Presbyterian minister shall publish or allow to be published any banns of matrimony in any Presbyterian meeting house of which he is minister, unless the persons to be married shall, six days at the least before the time required for the first publication of such banns, deliver or cause to be delivered to such Presbyterian minister a notice in writing of their true Christian and surnames, and of the congregation or congregations of which they shall respectively be members, and of the house or houses of their respective abodes, and of the time during which they have dwelt, inhabited, or lodged in such house or houses respectively (*l*).

7. Each presbytery of Presbyterians in Ireland may from time to time, subject to the approbation of the Lord Lieutenant, appoint one or more ministers, who shall certify to the registrar hereinafter mentioned that the meeting house to be described in every such certificate is within such presbytery, and is used as a place of public religious worship by Presbyterians in connection with such presbytery; and such minister shall deliver to the registrar such certificate, signed in duplicate by him; and the registrar shall send both certificates to the Registrar-General, who shall cause such meeting house to be registered accordingly in a book to be kept for that purpose at the General Register Office hereinafter mentioned; and the Registrar-General shall cause to be endorsed on both certificates the date of the registry, and shall keep one certificate with the other records of the General Register Office, and shall return the other certificate to the registrar, who shall keep the same with the other records of his office; and the registrar shall enter the date of the registry of such meeting house in a book to be furnished to him for that purpose by the Registrar-General, and shall give a certificate of such registry, under his hand, on parchment or vellum, to the minister by whom the certificates shall have been signed, and shall give public notice of the registry thereof by advertisement in some newspaper circulating within the county, and in the *Dublin Gazette*; and for every such entry, certificate, and publication the registrar

(*l*) See sect. 49 (*post*, p. 206).

shall receive at the time of delivery to him of the certificates the sum of one pound; and every such minister shall continue to exercise the powers given to him by this Act during the pleasure of the Lord Lieutenant.

8. Every such minister so appointed and approved as aforesaid shall have authority to grant licences for marriage in any Presbyterian meeting house, certified as aforesaid within his presbytery, in the form of Schedule (C.) to this Act annexed, and for every such licence shall be entitled to have of the party requiring the same the sum of five shillings; and in any case in which such minister shall refuse to grant such licence the person applying for the same shall be entitled to appeal to the presbytery by which such minister shall have been appointed, which shall thereupon either confirm the refusal or direct the grant of the licence; and every such Presbyterian minister shall four times in every year, on such days as shall be appointed by the Registrar-General, make a return to the Registrar-General of every licence granted by him since his last return, and of the particulars stated concerning the parties: Provided always, that no such minister shall grant any such licence until he shall have given security by his bond in the sum of one hundred pounds to the Registrar-General for the due and faithful execution of his office.

Such ministers to grant licences for marriages to be solemnized in Presbyterian meeting houses.

Minister to give security.

9. Before any licence for marriage as last aforesaid shall be granted by any such Presbyterian minister, one of the parties intending marriage shall appear personally before such minister, and such party shall make and subscribe an oath, or a solemn affirmation or declaration instead of taking an oath, which oath, affirmation, or declaration such minister is hereby authorised to administer, that he or she believeth that there is not any impediment of kindred or alliance, or other lawful hindrance to the said marriage, and that one of the said parties hath for the space of fifteen days immediately before the day of the grant of such licence had his or her usual place of abode within the Presbytery within which the marriage is to be solemnized, and that they are both of the full age of twenty-one years, or, when either of the parties shall be under the age of twenty-one years, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is no person having authority to give such consent, or that such party is a widower or widow, as the case may be.

Before licence granted one of the parties to appear before the minister, and to take a certain oath, &c.

10. The party so appearing personally before the minister authorised to grant licences as aforesaid shall, seven days before the licence shall be delivered to him, produce to such minister a certificate according to the form in Schedule (D.) to this Act annexed, or to the like effect, from the minister of the congregation of which he or she shall be a member, and has been a member for at least one calendar month preceding, which certificate the minister authorised to grant licences as aforesaid shall carefully file and preserve in such place and manner as the presbytery shall direct, and shall also forthwith enter a true copy of all such certificates fairly into a book to be for that purpose furnished to him by the Registrar-General, to be called "The Marriage Notice Book," which book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same; and for entering every such notice the minister shall be entitled to a fee of one shilling.

Person applying for a licence to produce from the minister of the congregation of which such person shall be a member a certificate in a given form.

11. Any person may enter a caveat with the minister so appointed and approved against the grant of a licence for the marriage of any person named therein (*m*); and if any caveat be entered with such minister, such caveat being duly signed by or on behalf of the person who enters the same, together with his or her place of residence, and the ground of objection on which his or her caveat is founded, no licence shall issue or be granted until the minister shall have examined into the matter of the caveat, and is satisfied that it ought not to obstruct the grant of the licence for the said marriage, or until the caveat be withdrawn by the party who entered the same; and in cases of doubt it shall be lawful for such minister to refer the matter of any such caveat to the presbytery by which he shall have been appointed, which shall decide upon the same.

Caveat may be lodged with the minister against grant of licence.

12. The Society of Friends commonly called Quakers, and also persons professing the Jewish religion, may continue to contract and solemnize marriage

Marriages of Quakers and Jews.

(*m*) See sects. 18 (*post*, p. 199) and 43 (*post*, p. 205).

according to the usages of the said society and of the said persons respectively; and every such marriage shall be deemed good in law, provided that the parties to such marriage be both of the said society (*n*), or both persons professing the Jewish religion respectively (*o*); provided also, that notice to the registrar shall have been given, and the registrar's certificate shall have issued in manner hereinafter provided.

Notice of intended marriage to be given to the registrar of the district.

13. In every case of marriage intended to be solemnized in Ireland after the said thirty-first day of March according to the rites of the United Church of England and Ireland (unless by licence or by special licence, or after publication of banns), and in every case of marriage intended to be solemnized in Ireland after the said thirty-first day of March according to the usages of the Quakers (*n*) or Jews (*p*), or according to any form authorised by this Act, one of the parties shall give notice under his or her hand, in the form of Schedule (A.) to this Act annexed, or to the like effect (*q*) to the registrar, appointed as hereinafter is mentioned, of the district within which the parties shall have dwelt for not less than seven days then next preceding, or if the parties dwell in the districts of different registrars shall give the like notice to the registrar of each district, and shall state therein the name and surname and the profession or condition of each of the parties intending marriage, the dwelling place of each of them (*r*), and the time not being less than seven days during which each has dwelt therein, and the church or other building in which the marriage is to be solemnized, which must be within the district within which one of the parties shall have dwelt for the time last aforesaid; but if either party shall have dwelt in the place stated in the notice during more than one calendar month it may be stated therein that he or she hath dwelt there one month and upwards: provided always, that no such notice shall be required for any marriage by a Roman Catholic priest which may now lawfully be celebrated, or when the marriage is intended to be solemnized by a Presbyterian minister between two persons, both or one of whom shall be Presbyterians, in a Presbyterian meeting-house certified as aforesaid.

Proviso.

14. *Registrar to keep notices in a book (s).*

15. *Notices to be published (t).*

After seven days, or twenty-one days, certificate of notice to be given, upon demand.

16. After the expiration of seven days if the marriage is to be solemnized by licence, or of twenty-one days if the marriage is to be solemnized without licence, after the day of the entry of such notice, the registrar, upon being requested so to do by or on behalf of the party by whom the notice was given, shall issue under his hand a certificate in the form of Schedule (B.) to this Act annexed, provided that no lawful impediment be shown to the satisfaction of the registrar why such certificate should not issue, and provided that the issue of such certificate shall not have been sooner forbidden in manner hereinafter mentioned by any person or persons authorised in that behalf as hereinafter is provided; and every such certificate shall state the particulars set forth in the notice, the day on which the notice was entered, and that the full period of seven days or of twenty-one days (as the case may be) has elapsed since the day of the entry of such notice, and that the issue of such certificate has not been forbidden by any person or persons authorised in that behalf; and for every such certificate the registrar shall be entitled to have a fee of one shilling (*u*).

Forms of certificates to be furnished.

17. The Registrar-General shall furnish to every registrar a sufficient number of forms of certificates, the cost of which shall be accounted for by the registrar

(*n*) 23 & 24 Vict. c. 18 (*ante*, p. 115).

(*o*) See 10 & 11 Vict. c. 58 (*post*, p. 237); 23 Vict. c. 18 (*post*, p. 145).

(*p*) Amended as to Jews, 34 & 35 Vict. c. 49, s. 28 (*post*, p. 234).

(*q*) For this Form is substituted the one set out in Schedule A to 26 Vict. c. 27 (*post*, p. 227).

(*r*) This is not now required in the case of Jews. See 34 & 35 Vict. c. 49, s. 28 (*post*, p. 234).

(*s*) This section has been altogether altered and amended by 26 Vict. c. 27, s. 3 (*post*, p. 213), and 33 & 34 Vict. c. 110, s. 41 (*post*, p. 213).

(*t*) Repealed by 26 Vict. c. 27, s. 1 (*post*, p. 217).

(*u*) See 26 Vict. c. 27, s. 5 (*post*, p. 218).

to the Registrar-General; and in order to distinguish the certificates to be issued for marriages by licence from the certificates to be issued for marriages without licence, a water-mark in the form of the word "Licence" in Roman letters, shall be laid and manufactured in the substance of the paper on which the certificates to be issued for marriage by licence shall be written or printed; and every certificate to be issued for marriage by licence shall be printed with red ink, and every certificate to be issued for marriage without licence shall be printed with black ink, and such other distinctive marks between the two kinds of certificate shall be used from time to time as shall seem fit to the Registrar-General^(x).

Certificates for marriage by licence to be distinguishable from other certificates.

18. Any person authorised in that behalf may forbid the issue of the registrar's certificate by writing at any time before the issue of such certificate the word "forbidden" opposite to the entry of the notice of such intended marriage in the marriage notice book, and by subscribing thereto his or her name and place of abode, and his or her character, in respect of either of the parties, by reason of which he or she is so authorised; and in case the issue of any such certificate shall have been so forbidden the notice and all proceedings thereupon shall be utterly void^(y).

Issue of registrar's certificate may be forbidden.

19. After the said thirty-first day of March no marriage shall be solemnized in Ireland by licence either of a surrogate or deputy surrogate, or of a Presbyterian minister or a registrar, as herein provided, where either of the parties, not being a widower or widow, shall be under the age of twenty-one years, unless the consent of the father of such of the parties so under age (if then living) be first had and obtained, or if dead of the guardian or guardians of the person of the party so under age lawfully appointed, or one of them, and in case there shall be no such guardian or guardians, then of the mother of such party, if unmarried, and if there shall be no mother unmarried, then of the guardian or guardians appointed by the Court of Chancery, if any, or one of them; and every person whose consent to a marriage by licence is required as aforesaid shall be authorised to enter a caveat against the issue of licence by any person empowered by this Act to grant licences, and shall be also authorised to forbid the publication of banns in any church or chapel, or certified Presbyterian meeting house, and to forbid the issue of the registrar's certificate.

Who are to give consent if parties are under age.

20. Provided always, if the father or fathers of the parties to be married, or one of them, so under age as aforesaid, shall be *non compos mentis*, or the guardian or guardians, mother or mothers, or any of them, whose consent is made necessary as aforesaid to the marriage of such party or parties, shall be *non compos mentis*, or in parts beyond the seas, or shall unreasonably or from undue motives refuse or withhold his, her, or their consent to a proper marriage, then it shall be lawful for any person desirous of marrying in any of the before-mentioned cases to apply by petition to the Lord Chancellor or the Lords Commissioners of the Great Seal of Ireland for the time being, or Master of the Rolls, who shall be empowered to proceed upon such petition in a summary way; and in case the marriage proposed shall upon examination appear to be proper, the said Lord Chancellor, Lords Commissioners of the Great Seal for the time being, or Master of the Rolls, shall judicially declare the same to be so; and such judicial declaration shall be deemed and taken to be as good and effectual to all intents and purposes as if the father, guardian or guardians, or mother, of the person so petitioning, had consented to such marriage.

Who to give consent in case of incapacity of parents and guardians.

21. After the said thirty-first day of March every registrar shall have authority to grant licences^(z) for marriage in any building registered as herein-after provided within his district, or in his office, in the form of Schedule (E.) to this Act annexed, and for every such licence shall be entitled to have of the party requiring the same the sum of five shillings; and every registrar shall four times in every year, on such days as shall be appointed by the Registrar-General, make a return to the Registrar-General of every licence granted by

Registrar may grant licences for marriage.

(x) As to registry books, see 26 Vict. c. 27, s. 6 (*post*, p. 218).

(y) See sect. 43 (*post*, p. 205).

(z) *Vide* 26 Vict. c. 27, s. 5 (*post*, p. 218).

Registrar to
give security.
Proviso.

him since his last return, and of the particulars stated concerning the parties: Provided always, that no registrar shall grant any such licence until he shall have given security by his bond in the sum of one hundred pounds to the Registrar-General for the due and faithful execution of his office: Provided also, that nothing herein contained shall authorise any registrar to grant any licence for marriage in any church or chapel in which marriages may be solemnized according to the rites of the United Church of England and Ireland, or in any church or chapel belonging to the said United Church, or licensed for the celebration of divine worship according to the rites and ceremonies of the said United Church, or any licence for a marriage between two persons, both or one of whom shall be Presbyterians, in a Presbyterian meeting house certified as aforesaid (a).

Certificate
to be given
before the
licence is
granted.

22. Before any licence for marriage shall be granted by any such registrar one of the parties intending marriage shall appear personally before such registrar, and, in case the notice of such intended marriage shall not have been given exclusively to such registrar, shall deliver to him the certificate of the other registrar to whom such notice shall have been given, and such party shall make oath, or shall make his or her solemn affirmation or declaration instead of taking an oath, that he or she believeth that there is not any impediment of kindred or alliance or other lawful hindrance to the said marriage, and that one of the said parties hath for the space of fifteen days immediately before the day of the grant of such licence had his or her usual place of abode within the district within which such marriage is to be solemnized, and that they are both of the full age of twenty-one years, or, where either of the parties shall be under the age of twenty-one years, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is no person having authority to give such consent, or that such party is a widower or widow, as the case may be (b).

Caveat may
be lodged
with registrar
against grant
of licence or
certificate.

23. Any person, upon the payment of the sum of five shillings, may enter a caveat with the registrar against the grant of a certificate or a licence for the marriage of any person named therein; and if any caveat be entered with the registrar, such caveat being duly signed by or on behalf of the person who enters the same, together with his or her place of residence, and the ground of objection on which his or her caveat is founded, no certificate or licence shall issue or be granted until the registrar shall have examined into the matter of the caveat, and is satisfied that it ought not to obstruct the grant of the certificate or licence for the said marriage, or until the caveat be withdrawn by the party who entered the same; provided that in cases of doubt it shall be lawful for the registrar to refer the matter of any such caveat to the Registrar-General, who shall decide upon the same; provided likewise, that in case of the registrar refusing the grant of the certificate or licence the person applying for the same shall have a right to appeal to the Registrar-General, who shall thereupon either confirm the refusal or direct the grant of the certificate or licence (c).

Marriages not
to be solemnized
until after
21 days after
entry of notice,
unless by
licence.

24. After the said thirty-first day of March no marriage after such notice as aforesaid, unless by virtue of a licence to be granted by the registrar, shall be solemnized or registered in Ireland until after the expiration of twenty-one days after the day of the entry of such notice as aforesaid; and no marriage shall be solemnized by the licence of any registrar or registered until after the expiration of seven days after the day of the entry of such notice as aforesaid.

New notice
required
after three
months.

25. A marriage shall not be had within three calendar months after the day on which the notice shall have been so entered by the registrar, the notice and certificate, and any licence which may have been granted thereupon, and all other proceedings thereupon, shall be utterly void; and no person shall proceed to solemnize the marriage, nor shall any registrar register the same, until new notice shall have been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

(a) See 26 Vict. c. 27, s. 11 (*post*, p. 219).

(b) See *ibid.* s. 4 (*post*, p. 218).

(c) See sect. 43 (*post*, p. 205).

26. The registrar's certificate, or, in case the parties shall have given notice to the registrars of different districts, the certificate of each registrar, shall be delivered to the officiating minister, if the marriage shall be solemnized according to the rites of the United Church of England and Ireland, or to the registering officer of the people called Quakers for the place where the marriage is solemnized, if the same shall be solemnized according to the usages of the said people, or to the officer of a synagogue by whom the marriage is registered, if the same shall be solemnized according to the usages of persons professing the Jewish religion, and in all other cases shall be delivered to the registrar present at the marriage (*d*), as hereinafter provided, and shall be by him kept with the records of his office (*e*).

Registrar's certificate or licence to be delivered to the person by or before whom the marriage is solemnized.

27. Any proprietor or trustee of a separate building, being a place of religious worship, may apply to the registrar of the district, in order that such building may be registered for solemnizing marriages therein, and in such case shall deliver to the registrar a certificate, signed in duplicate by ten householders at the least, that such building has been used by them during one year at the least as their usual place of public religious worship, and that they are desirous that such place should be registered as aforesaid, each of which certificates shall be countersigned by the proprietor or trustee by whom the same shall be delivered; and the registrar shall send both certificates to the Registrar-General, who shall cause such building to be registered accordingly in a book to be kept for that purpose at the General Register Office; and the Registrar-General shall cause to be endorsed on both certificates the date of the registry, and shall keep one certificate with the other records of the General Register Office, and shall return the other certificate to the registrar, who shall keep the same with the other records of his office; and the registrar shall enter the date of the registry of such building in a book to be furnished to him for that purpose by the Registrar-General, and shall give a certificate of such registry under his hand, on parchment or vellum, to the proprietor or trustee by whom the certificates are countersigned, and shall give public notice of the registry thereof by advertisement in some newspaper circulating within the county, and in the *Dublin Gazette*; and for every such entry, certificate, and publication the registrar shall receive at the time of the delivery to him of the certificates the sum of one pound (*f*).

Places of worship may be registered for solemnizing marriages therein.

28. If at any time subsequent to the registry of any such building for solemnizing marriages therein it shall be made to appear to the satisfaction of the Registrar-General that such building has been disused for the public religious worship of the congregation on whose behalf it was registered as aforesaid, the Registrar-General shall cause the registry thereof to be cancelled; provided that if it shall be proved to the satisfaction of the Registrar-General that the same congregation use instead thereof some other such building for the purpose of public religious worship, the Registrar-General may substitute and register such new place of worship instead of the disused building, although such new place of worship may not have been used for that purpose during one year then next preceding; and every application for cancelling the registry of any such building, or for such substitution and registry of a substituted building, shall be made to the Registrar-General by or through the registrar of the district; and such cancelling or substitution, when made, shall be made known by the Registrar-General to the registrar, who shall enter the fact and the date thereof in the book provided for the registry of such buildings, and shall certify and publish such cancelling or substitution and registry in manner hereinbefore provided in the case of the original registry of the disused building; and for every such substitution the registrar shall receive from the party requiring the substitution the sum of one pound; and after such cancelling or substitution shall have been made by the Registrar-General it shall not be

On removal of the same congregation, the new place of worship may be immediately registered instead of the one disused.

(*d*) See 26 Vict. c. 27, s. 8 (*post*, p. 218).

(*e*) See sects. 29, 30 (*post*, p. 202).

(*f*) See 26 Vict. c. 27, s. 12 (*post*, p. 219), 33 & 34 Vict. c. 110, s. 34 (*post*, p. 228), and 36 & 37 Vict. c. 16, s. 1 (*post*, p. 235).

Marriages may be solemnized in such registered places in the presence of two witnesses.

lawful to solemnize any marriage in such disused building, unless the same shall be again registered in the manner hereinbefore provided.

29. After the expiration of the said period of twenty-one days, or of seven days if the marriage is by licence, marriages may be solemnized in the registered building stated as aforesaid in the notice of such marriage, between and by the parties described in the notice and certificate, according to such form and ceremony as they may see fit to adopt: provided nevertheless, that every such marriage shall be solemnized with open doors, between the hours of eight in the forenoon and two in the afternoon, in the presence (g) of the registrar of the district in which such registered building is situate, and of two or more credible witnesses: provided also, that in some part of the ceremony, and in the presence of such registrar and witnesses, each of the parties shall declare,

“I do solemnly declare, that I know not of any lawful impediment why I A.B. may not be joined in matrimony to C.D.”

And each of the parties shall say to the other,

“I call upon these persons here present to witness, that I A.B. do take thee C.D. to be my lawful wedded wife [*or husband*].”

Provided also, that there be no lawful impediment to the marriage of such parties.

Marriages may be celebrated before the registrar at his office.

30. Any persons who shall object to marry under the provisions of this Act in any such registered building may, after due notice (h) and certificate issued as aforesaid, contract and solemnize marriage on any day except Sunday at the office and in the presence of the registrar of the district, and in the presence of two witnesses, with open doors, and between the hours aforesaid, making the declaration and using the form of words hereinbefore provided in the case of marriage in any such registered building.

Marriage fees to the registrar.

31. The registrar shall be entitled, for every marriage which shall be solemnized under this Act in his presence, to have from the parties married the sum of ten shillings if the marriage shall be by licence, and otherwise the sum of five shillings.

Proof of residence of parties, or of consent, &c. not necessary to establish the marriage.

32. After any marriage shall have been solemnized it shall not be necessary in support of such marriage to give any proof of the actual dwelling of either of the parties previous to the marriage within the district or presbytery (as the case may be) wherein such marriage was solemnized for the time required by this Act, or of the consent of any person whose consent thereunto is required by law; and where a marriage shall have been solemnized in a certified Presbyterian meeting house, it shall not be necessary to prove that either of the parties was a Presbyterian, or, if the marriage was by licence, that the certificate required to be delivered to the minister granting such licence had been so delivered, or, where the marriage was by banns, that a certificate of the publication of banns had been produced to the minister by whom the marriage was solemnized, in cases where such production is required by this Act; nor shall any evidence be given to prove the contrary of any of these several particulars in any suit touching the validity of such marriage, or in which such marriage shall be questioned.

Bishops, with consent of patrons, may licence chapels for the solemnization of marriages in populous places.

33. [And whereas it is expedient that provision should be made, under proper restrictions, for relieving the inhabitants of populous districts remote from the parish church, or from any chapel wherein marriages may be lawfully celebrated according to the rites and ceremonies of the United Church of England and Ireland, from the inconvenience to which they may be thereby subjected in the solemnization of their marriages;] (i) with the consent of the patron and incumbent respectively of the church of the parish or district in which may be situated any public chapel with or without a chapelry thereunto annexed, or any chapel duly licensed for the celebration of divine service according to

(g) As to dispensing with his attendance, *vide* 26 Viet. c. 27, s. 8 (*post*, p. 218).

(h) For what is “due notice,” see 6 & 7 Will. 4, c. 85, s. 4 (*ante*, p. 82).

(i) Words in brackets repealed.

the rites and ceremonies of the United Church of England and Ireland, or any chapel the minister whereof is duly licensed to officiate therein according to the rites and ceremonies of the United Church of England and Ireland, or without such consent after two calendar months' notice in writing given by the registrar of the diocese to such patron and incumbent respectively, the bishop of the diocese may, if he shall think it necessary for the due accommodation and convenience of the inhabitants, authorise by a licence under his hand and seal the publication of banns and solemnization of marriages in any such chapel for persons residing within a district the limits whereof shall be specified in the bishop's licence, and under such provisions as to the said bishop may seem fit, and as may be specified in the said licence; and the said licence shall be construed to extend to and authorise marriages in such chapels between parties, one or both of whom is or are resident within the said district: Provided always, that where the parties to any marriage intended to be solemnized after publication of banns shall reside within different ecclesiastical districts, the banns for such marriage shall be published as well in the church or chapel wherein such marriage is intended to be solemnized as in the chapel licensed under the provisions of this Act for the other district within which one of the parties is resident, and if there be no such chapel then in the church or chapel in which the banns of such last-mentioned party may be legally published: Provided also, that it shall be lawful for any patron or incumbent who shall refuse or withhold consent to the grant of any such licence to deliver to the bishop, under his or her hand and seal, a statement of the reasons for which such consent shall have been so refused or withholden; and no such licence shall be granted by any bishop until he shall have inquired into the matter of such reasons; and every instrument of consent of the patron and incumbent, or, if such consent be refused or withholden, a copy of the notice under the hand of the registrar, and every statement of reasons alleged as aforesaid by the patron or incumbent, with the bishop's adjudication thereupon under his hand and seal, shall be registered in the registry of the diocese; and thenceforth and until the said licence be revoked marriages solemnized in such chapel shall be as valid to all intents and purposes as if the same had been solemnized in the parish church, or in any chapel where marriages might heretofore have been legally solemnized (*k*).

34. All fees, dues, and other emoluments on account of the solemnization of marriages, which belong to the incumbent or clerk respectively of any church or chapel in any parish or district within which the solemnization of marriages shall be authorised as aforesaid, shall respectively be received, until the avoidance of such church or chapel next after the passing of this Act, for and on account of such incumbent, and until the vacancy in the office of clerk next after the passing of this Act for and on account of such clerk, and be paid over to them, except such portion of the fees, dues, or other emoluments as the said bishop of the diocese, with the consent of the said incumbent and clerk respectively, shall in such aforesaid licence assign to the minister and clerk respectively of the chapel in which the solemnization of marriages shall be authorised as aforesaid; and that it shall be lawful for the said bishop, in and by such licence, without any such consent, to declare that from and after such next avoidance or vacancy respectively the whole or such part of the fees, dues, and other emoluments on account of the solemnization of marriages in such last-mentioned chapel, as shall be specified in such licence, shall be receivable and the same shall thenceforth be received by or for the minister and clerk of such chapel respectively.

35. When the said bishop shall authorise the solemnization of marriages in any such chapel as aforesaid, without the consent of the patron and incumbent respectively, it shall be lawful for them or either of them to appeal within one calendar month to the archbishop of the province, who shall hear the same in a summary manner, and shall make such order, confirming, revoking, or varying the licence so given, as to him shall seem meet and expedient, which order

Appropriation of fees on marriages performed in such chapels.

Patron or incumbent may appeal to the archbishop against such licences.

(*k*) Amended and added to by 33 & 34 Vict. c. 110, s. 34 (*post*, p. 228).

shall be registered in the registry of the diocese, and shall be conclusive and binding on all parties whatsoever.

Notice of such licences to be affixed in chapels.

36. There shall be placed in some conspicuous part in the interior of every chapel in respect of which such licence shall be given as aforesaid a notice in the words following: "Banns may be published and marriages may be solemnized in this chapel."

Marriages performed in such chapels to be under the same regulations as those performed in parish churches.

37. All provisions which shall from time to time be in force relative to marriages, and to providing, keeping, and transmitting register books and copies of registers of marriages solemnized in any parish church, shall extend to any chapel in which the solemnization of marriages shall be authorised as aforesaid, in the same manner as if the same were a parish church; and every thing required by law to be done relating thereto by the rector, vicar, curate, or churchwardens respectively of any parish church shall be done by the officiating minister, chapelwarden, or other person exercising analogous duties in such chapel respectively.

Option to parties to be married at parish church.

38. Provided always, notwithstanding any such licence as aforesaid to solemnize marriages in any such chapel, the parties may, if they think fit, have their marriage solemnized in the parish church, or in any chapel in which heretofore the marriage of such parties or either of them might have been legally solemnized.

Bishop, with consent of archbishop, may revoke such licences;

39. Any such licence or order may at any time be revoked by writing under the hand and seal of the bishop of the diocese, with the consent in writing of the archbishop of the province; and such revocation and consent shall be registered in the registry of the diocese, the registrar whereof shall notify the same in writing to the minister officiating in the chapel, and shall also give public notice thereof by advertisement in some newspaper circulating within the county, and in the *Dublin Gazette*, and thenceforth the authority to solemnize marriages in such chapel shall cease.

in which case registers to be sent to the incumbent of the parish church.

40. In case of the revocation of the licence to solemnize marriages in any such chapel all registers of marriages solemnized therein under such licence which shall be in the custody or possession of the minister of such chapel at the time of such revocation shall forthwith be transmitted to the incumbent or officiating minister of the parish church, and shall thenceforth be preserved, and in all other respects dealt with in the same manner, and be of the same force and validity, to all intents and purposes, as if they had been originally made by and deposited with such incumbent or officiating minister; and that such incumbent or minister shall, when he next transmits to the registrar copies of the registers of marriages solemnized in such parish church, also therewith transmit copies of all such entries as shall have been made in such first-mentioned registers subsequent to the date of the last entry a copy whereof was transmitted to the registrar, and shall also transmit to him one copy of every register book so transmitted to him of which no copy shall have been already transmitted to the registrar, having first signed his name at the foot of the last entry therein.

Registrars of dioceses to send to the Register Office yearly lists of licensed chapels within their districts.

41. The registrar of every diocese shall, within fifteen days after the said thirty-first day of March, and also within fifteen days after the first day of January in every succeeding year, make out and send through the post office, directed to the Registrar-General of Marriages at his office, a list of all chapels belonging to the United Church of England and Ireland within that diocese wherein marriages may lawfully be solemnized according to the rites and ceremonies of the United Church of England and Ireland, and shall distinguish in such list which have a parish, chapelry, or other recognised ecclesiastical division annexed to them, and which are chapels licensed by the bishop under this Act, and shall state therein the district for which each of such chapels is licensed according to the description thereof in the licence⁽¹⁾; and the Registrar-General shall in every year cause to be made out and printed a list of all such chapels, and also of all places of public worship registered under the provisions

List of all chapels and buildings registered to be printed.

(1) See 33 & 34 Vict. c. 110, s. 34 (*post*, p. 228).

of this Act, and shall state in such list the county and registrar's district within which each chapel or registered building is situated, and shall add also the names and places of abode of the registrars; and a copy of such list shall be sent to every registrar.

42. Every marriage solemnized under this Act shall be good and cognizable in like manner as marriages before the passing of this Act according to the rites of the United Church of England and Ireland. Marriages under this Act cognizable.

43. Every person who shall enter a caveat with the registrar against the grant of any licence or issue of any certificate (*m*) on grounds which the Registrar-General shall declare to be frivolous, and that they ought not to obstruct the grant of the licence, shall be liable for the costs of the proceedings, and for damages, to be recovered in a special action upon the case by either of the parties against whose marriage such caveat shall have been entered; and a copy of the declaration of the Registrar General, purporting to be sealed with the seal of the General Register Office, and which seal it shall not be necessary to prove, shall be evidence that the Registrar-General has declared such caveat to be entered on frivolous grounds, and that they ought not to obstruct the grant of the licence. Persons vexatiously entering caveat liable to costs and damages.

44. Every person who shall knowingly and wilfully make any false declaration or sign any false notice (*n*) or certificate required by this Act, for the purpose of procuring any marriage, and every person who shall forbid the issue of any registrar's certificate, by falsely representing himself or herself to be a person whose consent to such marriage is required by this Act, or by falsely representing himself to be acting on behalf of such person, knowing such representation to be false, shall suffer the penalties of perjury. Persons making false declarations, &c. guilty of perjury.

45. Every person who after the said thirty-first day of March shall knowingly and wilfully solemnize any marriage or pretended marriage in Ireland, unless by special licence of the Archbishop of Armagh and his successors, and his or their proper officers, in any other place than a church or chapel in which marriages may be solemnized according to the rites of the United Church of England and Ireland, or a Presbyterian meeting house certified as aforesaid, or than the registered building or office specified in the notice and certificate as aforesaid, shall be guilty of felony (except in the case of a marriage by any Roman Catholic priest which may now be lawfully celebrated, or a marriage between two of the Society of Friends commonly called Quakers, according to the usages of the said society, or between two persons professing the Jewish religion, according to the usages of the Jews); and every person who in any such registered building or office shall knowingly and wilfully solemnize any marriage or pretended marriage in the absence of the registrar (*o*) shall be guilty of felony; and every person who shall knowingly and wilfully solemnize any marriage or pretended marriage in Ireland after the said thirty-first day of March (except by licence) within twenty-one days after the day of the entry of the notice to the registrar as aforesaid, or if the marriage is by licence within seven days after the day of the entry required by this Act made in any marriage notice book, or after three calendar months after the day of such entry, shall be guilty of felony. Persons unduly solemnizing marriage guilty of felony.

46. Every person knowingly and wilfully solemnizing any marriage, unless after due publication of banns or licence, or the issue of the registrar's certificate, or who shall knowingly and wilfully grant any such licence or publish any such banns, after the issue of such licence or the publication of such banns shall have been lawfully forbidden by some person authorised as aforesaid, shall be guilty of felony. Solemnizing marriage without publication of banns, &c.

47. Every registrar who shall knowingly and wilfully issue any certificate for marriage after the expiration of three calendar months after the day on which the notice shall have been entered by him as aforesaid, or any certificate Registrars unduly issuing certificates guilty of felony.

(*m*) See sects. 11 and 18 (*ante*, pp. 197, 199).

(*n*) See 26 Vict. c. 27, s. 15 (*post*, p. 220).

(*o*) The presence of the registrar is not now necessary in the case of marriages celebrated under the provisions of the Marriage Law (Ireland) Amendment Act, 1863 (26 Vict. c. 27), s. 8 (*post*, p. 218).

for marriage by licence before the expiration of seven days after the day of the entry of the notice, or any certificate for marriage without licence before the expiration of twenty-one days after the day of the entry of the notice, or any certificate the issue of which shall have been forbidden as aforesaid by any person authorised to forbid the issue of the registrar's certificate, or who shall knowingly and wilfully register any marriage herein declared to be null and void, and every registrar who shall knowingly and wilfully issue any licence for marriage after the expiration of three calendar months after the day on which the notice shall have been entered by the registrar as aforesaid, or who shall knowingly and wilfully solemnize or permit to be solemnized in his office any marriage herein declared to be null and void, shall be guilty of felony.

Limitation of prosecution.

48. Every prosecution under this Act shall be commenced within the space of three years after the offence committed.

Marriages void if unduly solemnized with the knowledge of both parties.

49. Except in the case of marriages by Roman Catholic priests which may now be lawfully celebrated, if any persons shall knowingly and wilfully intermarry after the said thirty-first day of March, in any place other than the church or chapel or certified Presbyterian meeting house in which banns of matrimony between the parties shall have been duly and lawfully published, or specified in the licence, where the marriage is by licence, or the church, chapel, registered building or office, specified in the notice and registrar's certificate or licence as aforesaid, or without due notice to the registrar, or without certificate of notice duly issued, or without licence from the registrar, in case such notice or licence is necessary under this Act, or in the absence of a registrar where the presence of a registrar is necessary under this Act, or if any persons shall knowingly or wilfully, after the said thirty-first day of March, intermarry in any certified Presbyterian meeting house without publication of banns, or any licence, the marriage of all such persons, except in any case hereinbefore excepted, shall be null and void.

9 Geo. 2 (I.) and 23 Geo. 2 (I.) repealed; but Act not to affect existing enactments respecting degraded clergymen.

50. [After the said thirty-first day of March an Act passed by the Irish Parliament in the ninth year of the reign of King George the Second, intituled "An Act for the more effectual preventing Clandestine Marriages," and so much of an Act passed in the twenty-third year of the same reign, for explaining and making more effectual the last-recited Act, as relates to the last-recited Act, shall be repealed; but that (p)] nothing in this Act shall extend to repeal any enactments now in force in Ireland for preventing the performance of the marriage ceremony by degraded clergymen (q).

In fraudulent marriages, the guilty party to forfeit all property accruing from the marriage, as in 4 Geo. 4, c. 76.

51. If any valid marriage shall be had under the provisions of this Act by means of any wilfully false notice, certificate, or declaration made by either party to such marriage, as to any matter to which a notice, certificate or declaration is herein required, it shall be lawful for her Majesty's Attorney-General or Solicitor-General for Ireland to sue in the Court of Chancery or Court of Exchequer in Ireland for a forfeiture of all estate and interest in any property accruing to the offending party by such marriage; and the proceedings thereupon and consequences thereof shall be the same as are provided in the like case with regard to marriages solemnized in England by licence before the passing of this Act according to the rites of the Church of England (r).

A general registry office to be provided in Dublin.

52. In order to provide the means for a register of the marriages of her Majesty's subjects in Ireland who shall be married under the provisions of this Act, it shall be lawful for the Lord Lieutenant to provide a proper office in the City of Dublin, to be called "The General Register Office," for keeping a register of such marriages, and to appoint for the said office a Registrar-General of marriages in Ireland, and from time to time at pleasure to remove the said Registrar-General, and appoint some other person in his room.

Lord Lieutenant to appoint officers.

53. The Lord Lieutenant, or the Registrar-General, subject to the approval of the Lord Lieutenant, shall appoint from time to time such officers, clerks, and servants as he shall deem necessary to carry on the business of the general registry office, and at pleasure remove them or any of them.

(p) Words in brackets repealed by 37 & 38 Vict. c. 96.

(q) 12 Geo. 1, c. 3, s. 1 (*ante*, p. 194).

(r) See 4 Geo. 4, c. 76, s. 23 (*ante*, p. 75).

[54. *Salaries and expenses to be paid out of the Consolidated Fund (s).*]

55. The Lord Lieutenant, or the Registrar-General, with his approbation, from time to time may make regulations for the management of the said register office, and for the duties of the Registrar-General, clerks, officers, and servants of the said office, and of the registrars hereinafter mentioned, in the execution of this Act, so that they be not contrary to the provisions herein contained; and the regulations so made and approved shall be binding on the said Registrar-General, clerks, officers, and servants, and on the registrars.

Regulations for conduct of officers to be framed under direction of Lord Lieutenant.

56. The Registrar-General shall send once in every year to the Lord Lieutenant, who shall forthwith transmit the same to one of the principal Secretaries of State, a general abstract of the number of marriages registered during the foregoing year, in such form as the said secretary from time to time shall require; and every such annual general abstract shall be laid before Parliament within one calendar month after receipt thereof, or, if Parliament be not then sitting, within one calendar month after the next meeting of Parliament.

Annual abstract of registers to be laid before Parliament.

57. The Lord Lieutenant shall, as soon as may be after the passing of this Act, form all the parishes, townships, and places in Ireland into districts; and the Lord Lieutenant shall appoint a sufficient number of fit persons to be registrars for such districts, and shall appoint the districts which each shall superintend (*t*); and every such registrar shall hold his office during the pleasure of the Registrar-General.

Registrars to be appointed for districts to be formed by Lord Lieutenant.

58. A register office shall be provided and upheld in each district, according to a plan to be approved by the Registrar-General, for preserving the registers to be deposited therein, and hereinafter provided; and the care of the said office, and the custody of the registers deposited therein, shall be given to the registrar of the district.

A register office to be provided in each district.

59. The appointments of registrars, and the duplicates and certified copies of registers, hereinafter mentioned, shall be exempt from stamp duties.

Appointments, &c. exempt from stamp duty.

60. The Registrar-General shall furnish to every registrar a sufficient number of strong iron boxes to hold the register books to be kept by every such registrar; and every such box shall be furnished with a lock and key, which key shall be kept by the registrar; and the register books of each district, while in the custody of the registrar, and not in use, shall be always kept in the register box, and the register box shall always be left locked.

Register boxes to be provided.

61. In every case in which any registrar shall be removed from or cease to hold the said office, all register boxes, keys, books, documents, and papers in his possession as such registrar shall be given as soon as conveniently may be to his successor in office; and if any person shall refuse to give up any such box, key, books, documents, or papers in such case as aforesaid it shall be lawful for any justice of the peace for the county or other jurisdiction where such person shall be or reside, upon application made for that purpose, to issue a warrant under his hand and seal for bringing such person before any two justices of the peace for the said county or other jurisdiction; and upon such person appearing, or not being found, it shall be lawful for such justices to hear and determine the matter in a summary way; and if it shall appear to the justices that any such box, key, books, documents, or papers are in the custody or power of any such person, and that he has refused or wilfully neglected to deliver the same, the said justices shall commit such offender to the common gaol or house of correction for the said county or jurisdiction, there to remain without bail until he shall have delivered up the same, or until satisfaction shall have been given in respect thereof to the person in whose custody the same ought to be; and the said justices may grant a warrant to search for such box, key, books, documents, or papers, as in the case of stolen goods, in any dwelling house or other premises in which any credible witness shall prove upon oath before them that there is reasonable cause to suspect the same to be; and the same when found shall be delivered to the person in whose custody they ought to be.

All books, &c. to be transferred on removal of registrars.

(s) Amended by 17 & 18 Vict. c. 94, s. 1.

(t) See as to alteration of boundaries, 26 & 27 Vict. c. 90, s. 8 (*post*, p. 223).

Register books to be provided.

62. The Registrar-General shall cause to be printed on account of the said register office a sufficient number of register books for making entries of all marriages of her Majesty's subjects in Ireland who shall be married under the provisions of this Act, according to the form of Schedule (G.) to this Act annexed; and the said register books shall be of durable materials, and in them shall be printed upon each side of every leaf the heads of information herein required to be known and registered of marriages; and every page of each of such books shall be numbered progressively from the beginning to the end, beginning with number one; and every place of entry shall be also numbered progressively from the beginning to the end of the book, beginning with number one; and every entry shall be divided from the following entry by a printed line.

Registrars to furnish marriage register books and forms for certified copies.

63. The Registrar-General shall furnish to every registrar a sufficient number of marriage register books, and forms for certified copies thereof as hereinafter provided, and also, on being thereunto required, shall furnish or cause to be furnished to the rector, vicar, or curate of every church and chapel in Ireland wherein marriages may lawfully be solemnized, and also to the Presbyterian minister of every certified Presbyterian meeting house, and also to every person whom the recording clerk of the Society of Friends commonly called Quakers, at their central office in Dublin, shall from time to time certify in writing under his hand to the Registrar-General to be a registering officer in Ireland of the said society, and also to every person whom the president for the time being of the London Committee of Deputies of the British Jews shall from time to time certify in writing under his hand to the Registrar-General to be the secretary of a synagogue in Ireland of persons professing the Jewish religion, a sufficient number in duplicate of marriage register books (*u*), and forms for certified copies thereof, as hereinafter provided; and the costs of all such books and forms shall be paid by the high constable out of the county rates.

Marriage registers to be kept in duplicate.

64. Every clergyman of the United Church of England and Ireland, immediately after every office of matrimony solemnized by him, shall register in duplicate in two of the marriage register books the several particulars relating to that marriage according to the form of the said Schedule (G.); and every Presbyterian minister of a certified Presbyterian meeting house, and every such registering officer of the Quakers, as soon as conveniently may be after the solemnization of any marriage between two Quakers in the district for which he is registering officer, and every such secretary of a synagogue, immediately after every marriage solemnized between any two persons professing the Jewish religion, of whom the husband shall belong to the synagogue whereof he is secretary, shall register or cause to be registered in duplicate in two of the said marriage register books the several particulars relating to that marriage according to the form of the said Schedule (G.); and every such registering officer or secretary, whether he shall or shall not be present at such marriage, shall satisfy himself that the proceedings in relation thereto have been conformable to the usages of the said society, or of the persons professing the Jewish religion, as the case may be; and every such entry as hereinbefore is mentioned (whether made by such clergyman, or by such Presbyterian minister, or by such registering officer or secretary respectively as aforesaid), shall be signed by the clergyman, or by such Presbyterian minister, or by the said registering officer or secretary, as the case may be, and by the parties married, and by two witnesses, and shall be made in order from the beginning to the end of each book, and the number of the place of entry in each duplicate marriage register book shall be the same.

Duplicates and certified copies of registers of marriages to be sent to registrar.

65. The rector, vicar, or curate of every such church and chapel, and every such Presbyterian minister of a certified Presbyterian meeting house, and every such registering officer and secretary, shall, in the months of April, July, October, and January respectively, make and deliver to the registrar of the district in which such church or chapel or certified Presbyterian meeting house

(*u*) See 26 Vict. c. 27, s. 6 (*post*, p. 218), and 26 & 27 Vict. c. 90, s. 6 (*post*, p. 223).

or registered place of worship may be situated, or which may be assigned by the Registrar-General to such registering officer or secretary, on one of the forms to be furnished to him as aforesaid by the Registrar-General, a true copy certified by him under his hand of all the entries of marriages in the register book kept by him since the last certificate, the first of such certificates to be given in the month of April One thousand eight hundred and forty-five, and to contain all the entries made up to that time, and if there shall have been no marriage entered therein since the last certificate shall certify the fact under his hand, and shall keep the said marriage register books safely until the same shall be filled; and one copy of every such register book, when filled, shall be delivered to the registrar of the district in which such church or chapel or certified Presbyterian meeting house may be situated, or which shall have been assigned as aforesaid to such registering officer or secretary, and the other copy of every such register book kept by any such rector, vicar, or curate shall remain in the keeping of such rector, vicar, or curate, and shall be kept by him with the registers of baptisms and burials of the parish or chapelry within which the marriages registered therein shall have been solemnized, and the other copy of every such register book kept by any such Presbyterian minister shall remain under the care of such Presbyterian minister, and be kept with the other registers and records of his meeting house, and the other copy of every such register book of marriages among the people called Quakers and among persons professing the Jewish religion respectively shall remain under the care of the said people or persons respectively, to be kept with their other registers and records, and shall, for the purposes of this Act, be still deemed to be in the keeping of the registering officer or secretary for the time being respectively.

66. The registrar shall forthwith register every marriage solemnized in manner aforesaid in his presence, either in a registered building or in his office, in a marriage register book to be furnished to him for that purpose from time to time by the Registrar-General according to the form in Schedule (G.); and every entry of such marriage shall be signed by the registrar, and also by the parties married, and attested by two witnesses; and every such entry shall be made in order from the beginning to the end of the book; and the registrar shall keep the said marriage register books with the records of his office, and shall, in the months of April, July, October, and January respectively, make, on one of the forms to be furnished to him as aforesaid by the Registrar-General, a true copy, certified by him as aforesaid, in the form of Schedule (F.) annexed to this Act, of all the entries of marriages in the register book kept by him since the last certificate, the first of such certificates to be given in the month of July One thousand eight hundred and forty-five, and to contain all the entries made up to that time, and if there shall have been no marriage entered therein since the last certificate shall certify the fact under his hand (x).

67. Every registrar shall four times in every year, on such days as shall be therefore named by the Registrar-General, send to the Registrar-General all the certified copies of the registers of marriages which he shall have so made or received; and the Registrar-General, if it shall appear, by interruption of the regular progression of numbers or otherwise, that the copy of any part of any book has not been duly delivered to him, shall procure, as far as possible, consistently with the provisions of this Act, that the same may be remedied and supplied; and the certified copies so sent to the General Registry Office shall be thereafter kept in the said office in such order and manner as the Registrar-General, under the direction of the Lord Lieutenant, shall think fit, so that the same may be most readily seen and examined.

68. Every rector, vicar, or curate, or Presbyterian minister of a certified Presbyterian meeting house, and every registrar, registering officer, and secretary, who shall have the keeping for the time being of any register book of marriages, wherein any marriage shall have been registered under this Act, shall at all reasonable times allow searches to be made of any register book in his keeping, and shall give a copy certified under his hand of any entry or

Registrar to register all marriages solemnized before him in books to be sent by the Registrar-General.

Registrars to send certified copies of registers to the General Registry Office.

Searches may be made and certificates given by the persons keeping the registers.

(x) Amended by 26 & 27 Vict. c. 90, s. 14 (*post*, p. 224).

Fees.

entries in the same, on payment of the fee hereinafter mentioned; (that is to say,) for every search extending over a period not more than one year the sum of one shilling, and sixpence additional for every additional year, and the sum of two shillings and sixpence for every single certificate.

Indexes to be made at every registrar's office, and persons allowed to search them. Fees.

69. Every registrar shall cause indexes of the register books in his office to be made, and kept with the other records of his office; and that every person shall be entitled at all reasonable hours to search the said indexes, and to have a certified copy of any entry or entries in the said register books under the hand of the registrar, on payment of the fees hereinafter mentioned (*y*); (that is to say,) for every general search the sum of five shillings, and for every particular search the sum of one shilling, and for every certified copy the sum of two shillings and sixpence.

Indexes to be kept at General Register Office, searches allowed, and certified copies given. Fees.

70. The Registrar-General shall cause indexes of all the said certified copies of the registers to be made and kept in the General Register Office; and that every person shall be entitled to search the said indexes between the hours of ten in the morning and four in the afternoon of every day, except Sundays, Christmas Day, and Good Friday, and to have a certified copy of any entry in the said certified copies of the registers; and for every general search of the said indexes shall be paid the sum of twenty shillings, and for every particular search the sum of one shilling, and for every such certified copy the sum of two shillings and sixpence, and no more, shall be paid to the Registrar-General, or such other officer as shall be appointed for that purpose, on his account.

Certified copies given at General Registry Office to be sealed.

71. The Registrar-General shall cause to be made a seal of the said Register Office, and the Registrar-General shall cause to be sealed or stamped therewith all certified copies of entries given in the said office; and all certified copies of entries purporting to be sealed or stamped with the seal of the said Register Office, and which seal it shall not be necessary to prove, shall be received as evidence of the marriage to which the same relates, without any further or other proof of such entry, and no certified copy purporting to be given in the said office shall be of any force or effect which is not sealed or stamped as aforesaid.

Penalty for wilfully giving false information.

72. [*Clergymen, &c. may ask parties married the particulars required (z).*]

73. Every person who shall wilfully make or cause to be made, for the purpose of being inserted in any register of marriage, any false statement touching any of the particulars herein required to be known and registered, shall be subject to the same pains and penalties as if he were guilty of perjury.

Penalty for not duly registering marriages, or for losing or injuring the registers.

74. Every person who shall refuse or without reasonable cause omit to register any marriage solemnized by him, or which he ought to register, and every person having the custody of any register book, or certified copy thereof, or of any part thereof, who shall carelessly lose or injure the same, or carelessly allow the same to be injured whilst in his keeping, shall forfeit a sum not exceeding fifty pounds for every such offence.

75. [*Penalty for destroying or falsifying register books (a).*]

Accidental errors may be corrected.

76. Provided always, no person charged with the duty of registering any marriage, who shall discover any error to have been committed in the form or substance of any such entry, either by himself or any predecessor in his office, shall be therefore liable to any of the penalties aforesaid if within one calendar month next after the discovery of such error, in the presence of the parties married, or in case of the death or absence of such parties, then in the presence of the registrar and of two other credible witnesses who shall respectively attest the same, he shall correct the erroneous entry, according to the truth of the case, by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereunto the day of the month and year when such correction shall be made, and shall make the like marginal entry, attested in like manner, in the duplicate marriage register book to be made by him as aforesaid, and in every case shall make the like alteration in

(*y*) Amended by 26 & 27 Vict. c. 90, s. 17 (*post*, p. 225).

(*z*) Repealed by 41 & 42 Vict. c. 79.

(*a*) Repealed by 24 & 25 Vict. c. 95, s. 1; see now 24 & 25 Vict. c. 98, ss. 36, 37.

the certified copy of the register book to be made by him as aforesaid, or in case such certified copy shall have been already made he shall make and deliver in like manner a separate certified copy of the original erroneous entry, and of the marginal correction therein made.

77. All fines and forfeitures by this Act imposed, unless otherwise directed, shall be recovered before any two justices of the peace for the county, city, or place where the offence shall have happened, upon the information or complaint of any person; and if on the conviction of the offender, either on his or her confession, or by the oath of any one or more credible witness or witnesses (which oath such justices are hereby empowered to administer), such fines or forfeitures, with the costs of the conviction, shall not be forthwith paid, the same shall be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of such justices; and for want of distress such justices may commit every such offender to the common gaol or house of correction for the county, city, or place where the offence shall be committed, without bail or mainprize, for any term not exceeding one calendar month, unless such fine and forfeiture, and all reasonable charges attending the recovery thereof, shall be sooner paid . . . (b); and no distress made by virtue of this Act shall be deemed unlawful, nor shall the party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, or warrant of distress, or on account of any irregularity which shall be afterwards committed by the party distraining, but the person or persons aggrieved by such irregularity shall recover full satisfaction for the special damages sustained in an action on the case.

Recovery of penalties.

78. The prosecution for every offence punishable on summary conviction under this Act shall be commenced within three calendar months next after the commission of the offence.

Limitation as to summary convictions.

79. In all cases where the sum adjudged to be paid on any such summary conviction shall exceed five pounds, any person convicted may appeal to the next court of general or quarter sessions which shall be holden not sooner than twelve days after the day of such conviction for the county or other district wherein the cause of complaint shall have arisen; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or enter into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; and upon such notice being given, and such recognizances being entered into, the Court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs, to either party, as to the Court shall seem meet, and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.

Appeal.

80. No such conviction, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by certiorari or otherwise into any of Her Majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a valid conviction to sustain the same.

No certiorari.

81. Provided always, nothing herein contained shall affect the right of any officiating minister to receive the fees now usually paid for the performance or registration of any marriage.

Not to affect right of officiating minister to fees.

82. [Registrar-General to furnish notices to guardians of unions, &c., specifying acts required to be done by parties registering (c).]

83. And whereas marriages have in divers instances been had and celebrated in Ireland by Presbyterian and other Protestant dissenting ministers or teachers,

Certain marriages celebrated in

(b) Words omitted repealed by 37 & 38 Vict. c. 96.

(c) Repealed in 1874.

Ireland to be the same in law as if solemnized by clergymen of the Established Church.

or those who at the time of such marriages had been such, between persons of the same or different religious persuasions, and it is expedient to confirm such marriages ; be it therefore enacted, that all marriages had and celebrated in Ireland since the passing of an Act passed in the last session of Parliament, intituled “An Act for Confirmation of certain Marriages in Ireland,” and before the passing of this Act, by Presbyterian or other Protestant dissenting ministers or teachers, or those who at the time of such marriages had been such, shall be and shall be adjudged and taken to have been and to be of the same force and effect in law as if such marriages had been solemnized by clergymen of the United Church of England and Ireland, and of no other force nor effect whatsoever.

Extent of Act.84. This Act shall extend only to Ireland, and shall not extend to the marriage of any of the Royal Family.

SCHEDULES to which this Act refers.

SCHEDULE (A) (d).

SCHEDULE (B).

[No. II.]

REGISTRAR’S CERTIFICATE.

I [John Cox], registrar of the district of [Roscrea] in the county of [Tipperary], do hereby certify, that on the [Sixth] day of [May] notice was duly entered in the marriage notice book of the said district of the marriage intended between the parties therein named and described, delivered under the hand of [Lucius O’Hara], one of the parties ; (that is to say,)

Name.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.	Church or Building in which Marriage is to be solemnized.	District and County in which the other Party dwells, where the Parties dwell in different Districts.
Lucius O’Hara..	Widower	Carpenter	Of full Age	High Street.	23 Days.	Sion Chapel, Roscrea, Tipperary.	Maryborough, Queen’s County.
Margaret Shaw.	Spinster	.....	Minor	Grove Farm.	More than a Month.		

Date of notice entered, 6th May, 1845

Date of certificate given, 28th May, 1845

The issue of this certificate has not been forbidden by any person authorised to forbid the issue thereof.

Witness my hand this [twenty-eighth] day of [May, one thousand eight hundred and forty-five].

(Signed) [John Cox], Registrar.

This certificate will be void unless the marriage is solemnized on or before the [Seventh] day of [August, 1845].

[The particulars in this schedule to be entered according to the fact.]

SCHEDULE C.

LICENCE OF MARRIAGE.

Whereas a marriage is intended to be solemnized between A. B. of and C. D. of : And whereas application for a licence hath been made to me E. F. the Presbyterian minister duly authorised by His Excellency the

(d) This schedule is not now used. Another form has been substituted by 26 Vict. c. 27 (post, p. 221).

Lord Lieutenant pursuant to the provisions of an Act passed in the eighth year of the reign of Queen Victoria, intituled "An Act," &c. [*here insert the title of this Act*], to issue marriage licences within the bounds of the Presbytery of : And whereas I have received the certificate required by law from the Reverend G. A., minister of the congregation of of which A. B. [*or C. D.*] is a member : And whereas I have duly ascertained, by the oath [*or affirmation*] of the said A. B. [*or C. D.*], that the parties are respectively of the age of twenty-one years, and that there is no impediment of kindred or alliance or other lawful hindrance to the said marriage, and that A. B. [*or C. D.*] has had his [*or her*] usual place of abode for the space of fifteen days last past within the bounds of the Presbytery of , or [*in cases where either party is under age, and not a widower or widow,*] that A. B. [*or C. D.*] is under the age of twenty-one years, and that the consent of I. K., whose consent to his [*or her*] marriage is required by law, has been obtained thereto [*or that there is no person having authority to give such consent, or, where a party so under age is a widower or widow, that A. B. [*or C. D.*] is under twenty-one years of age, but is a widower or widow, as the case may be*]: Now I do hereby grant unto the Reverend or other the minister officiating in the certified Presbyterian meeting house of full licence, according to the authority in that behalf given to me by the said Act, to proceed to solemnize such marriage; provided that the said marriage be publicly solemnized in the presence of two witnesses, within one calendar month from the date hereof, in the certified Presbyterian meeting house of [*here describe the meeting house in which the marriage is to be solemnized*], between the hours of eight in the forenoon and two in the afternoon. Given under my hand, this day of one thousand eight hundred and .

(Signed) E. F.,
Licencer of Presbyterian Marriages.

SCHEDULE D.

PRESBYTERIAN MINISTER'S CERTIFICATE.

I [*John Mason*], Presbyterian minister of in the Presbytery of do hereby certify, that on the day of notice was duly entered in a book kept for that purpose in my congregation of the marriage intended between the parties therein named and described, delivered under the hand of one of the parties, who is and has been for the last calendar month a member of my own congregation : (that is to say,)

Name.	Condition.	Rank or Profession.	Age.	Residence.	Length of Residence.	Church or Building in which Marriage is to be performed.	County and Parish in which the other Party dwells, or where the Parties dwell in different Parishes, Congregations, or Districts.
John Brown .	Widower	Mason	Full Age or 21.	County Down. Parish Comber. Townland Comber.	2 Years.	1st Presbyterian Church, Comber.	Congregation of Kilrea, County of Derry.
Mary Mahon.,	Spinster	Milliner	Full Age.	County Derry. Parish Kilrea. Town Kilrea.			

Witness my hand, this day of one thousand eight hundred and

(Signed) [*John Mason,*]
Minister of the congregation of .

[The particulars in this schedule to be entered according to the fact.]

SCHEDULE E.

LICENCE OF MARRIAGE.

A. B., registrar of to C. D. of and E. F. of sendeth greeting.

Whereas ye are minded, as it is said, to enter into a contract of marriage under the provisions of an Act passed in the eighth year of the reign of Queen Victoria, intituled [*here insert the title of this Act*], and are desirous that the same may be speedily and publicly solemnized: And whereas you C. D. [*or E. F.*] have made and subscribed a declaration under your hand that you believe there is no impediment of kindred or alliance or other lawful hindrance to the said marriage, and that you C. D. [*or E. F.*] have [*or has*] had your [*or his or her*] usual place of abode for the space of fifteen days last past within the district of (), and [*in cases where either party is under age, and not a widower or widow,*] that you C. D. [*or E. F.*] are [*or is*] under the age of twenty-one years, and that the consent of G. H., whose consent to your [*or his or her*] marriage is required by law, has been obtained thereto [*or that there is no person having authority to give such consent*], or, where a party so under age is a widower or widow, that you C. D. [*or E. F.*] are [*or is*] under twenty-one years of age, but are [*or is*] a widower or widow [*as the case may be*]: I do hereby grant unto you full licence, according to the authority in that behalf given to me by the said Act, to proceed to solemnize such marriage; provided that the said marriage be publicly solemnized in the presence of two witnesses, within three calendar months from the [*here insert the date of the entry in the notice book of the registrar*], in the [*here describe the building in which the marriage is to be solemnized*], between the hours of eight in the forenoon and two in the afternoon. Given under my hand, this day of one thousand eight hundred and .

(Signed) A. B.,
 Registrar.

SCHEDULE (F.).

I [*John Cox*], registrar of the district of [*Roscrea*] in the county of [*Tipperary*], do hereby certify, that this is a true copy of the entries of marriage registered in the said district from the entry of the marriage of [*John Wood*] and [*Anne Simpson*], number [*one*], to the entry of the marriage of [*Lucius O'Hara*] and [*Margaret Shaw*], number [*fourteen*]. Witness my hand, this [*first day of July, 1845*].

(Signed) JOHN COX,
 Registrar.

[The particulars in this schedule to be entered according to the fact.]

SCHEDULE (G.).

1845.—MARRIAGES solemnized [*at the Parish Church*] in the [*Parish of St. Audeon*] in the City of [*Dublin*].

No.	When Married.	Name and Surname.	Age.	Condition.	Rank or Profession.	Residence at the Time of Marriage.	Father's Name and Surname.	Rank or Profession of Father.
1	27 March, 1845.	Patrick Donovan.	Of full Age.	Bachelor.	Carpenter	3, South Street.	Peter Donovan.	Upholsterer.
		Mary O'Brien.	Minor	Spinster.	.....	17, High Street.	Laurence O'Brien.	Butcher.

Married in the [*Parish Church*], according to the rites and ceremonies of the [*United Church of England and Ireland, by Licence*], or [*after Banns*],

By me, [*William Jackson, Vicar.*]

This marriage was solemn- { Patrick Donovan, } in the pre- { Dennis Donovan.
nized between us, { Mary O'Brien, } sence of us, { Laurence O'Brien.

[The particulars in this schedule to be entered according to the fact.]

8 & 9 VICT. c. 54.

An Act to amend the laws in force in Ireland for unions and divisions of parishes, for the settlement of the patronage thereof, and the celebration of marriages in the same.

Sect. 5. Until a parish church be built in any such united or newly erected parish, marriages of parties dwelling therein may be celebrated according to the rites of the United Church of England and Ireland in the parish church of any adjoining parish.

THE MARRIAGES (IRELAND) ACT, 1846.

9 & 10 VICT. c. 72.

An Act to amend the Act for marriages in Ireland, and for registering such marriages. [26th August, 1846.]

Recital of the Marriages (Ireland) Act, 1844 (*e*): And whereas it is expedient to amend the provisions of the same in respect of marriages of parties, one of whom may reside in England or Scotland: Be it therefore enacted, &c. In any case of a marriage intended to be solemnized in Ireland between parties one of whom shall be resident in England, such party so resident in England shall give notice in the form used in England in that behalf, or to the like effect, to the superintendent registrar of the district within which such party shall have dwelt for not less than seven days then next preceding, and shall state therein the name and surname and the profession or condition of each of the parties intending marriage, the dwelling place of each of them, and the time, not being less than seven days, during which each has dwelt therein, and the church or other building in which the marriage is to be solemnized, provided that if either party shall have dwelt in the place stated in the notice more than one calendar month, it may be stated therein that he or she hath dwelt there one month and upwards; and such notice shall be dealt with in such manner, and such certificate shall be given by such registrar in such manner as is prescribed in the Marriage Act, 1836 (*f*), provided that in such case such certificate shall not be issued before the expiration of seven days from the entry of such notice as aforesaid; and from and after the expiration of seven days from the issuing of such certificate, the production of the same to the person duly authorised under the provisions of the said first-recited Act to grant a licence for marriage in such case, shall be as valid and effectual to all intents and purposes for authorising such person to grant a licence for marriage, and such certificate shall be as valid and effectual for all other purposes under the provisions of the said first-recited Act as any certificate of a registrar of a district in Ireland would be under the said Act if such party giving such notice were resident within such district in Ireland, and the other party to such intended marriage were also resident within another registrar's district in Ireland.

Marriages intended to be solemnized in Ireland between parties one of whom resides in England, notice of the same to be given to the superintendent registrar of the district in England within which the party resides seven days preceding, &c.

2. In the case of a marriage intended to be solemnized in Ireland between parties one of whom shall be resident in Scotland, it shall be lawful for such party to obtain from the minister of the congregation in Scotland of which he or she shall be a member for at least one calendar month preceding, a certificate under his hand that banns of such intended marriage of such parties have been duly published or proclaimed in such congregation on three several Sundays (*g*), and from and after the expiration of seven days from the granting of such certificate, the production of such certificate to the person duly authorised in Ireland under the provisions of the said first-recited Act (*h*), to grant a licence

Marriages intended to be solemnized in Ireland between parties one of whom shall be resident in Scotland, a certificate of the banns having been published on three several Sundays in the

(*e*) 7 & 8 Vict. c. 81 (*ante*, p. 194).

(*f*) 6 & 7 Will. 4, c. 85 (*ante*, p. 81).

(*g*) See 41 & 42 Vict. c. 43, s. 6 (*ante*, p. 187), as to a registrar's certificate being equivalent to proclamation of banns in Scotland.

(*h*) 7 & 8 Vict. c. 81, s. 16 (*ante*, p. 198).

congregation of which the party is a member to be obtained from the minister.

Places having no parish church, &c., and extra-parochial places having no chapel wherein marriages may be solemnized, to be deemed, for the purpose of this Act only, to belong to an adjoining parish.

When parish church is in ruins, or under repair, &c., banns may be proclaimed and marriages celebrated in an adjoining parish, &c.

for marriage in such case shall be as valid and effectual to all intents and purposes for authorising such person to grant a licence for marriage, and such certificate shall be as valid and effectual for all other purposes under the provisions of the said recited Act as any certificate of a registrar of a district in Ireland would be under the said Act if such party giving such notice were resident within such district in Ireland, and the other party to such intended marriage also were resident within another registrar's district in Ireland.

3. [And whereas it is by the said Act (*i*), amongst other things, provided, that no surrogate or other person having authority to grant any licences for marriages shall grant any licence for marriage, not being a special licence, until seven days after notice shall have been given by one of the parties who shall have resided for not less than seven days then next preceding in the parish named in that notice, under his or her hand, in the form therein mentioned, to such surrogate or other person having authority to grant licences as aforesaid, which notices he shall file and keep with the records of his office, and that such surrogate or other person shall forthwith send a copy of such notice to the incumbent or incumbents of the parish or parishes in which the parties intending marriage dwell: And whereas certain parishes in Ireland have no parish church or chapel belonging thereto, or no church or chapel where Divine service is usually solemnized every Sunday, and certain places are extra-parochial; and it is expedient to make provision for such cases, and other cases, as hereinafter mentioned] . . . (*k*) all parishes where there shall be no parish church or chapel belonging thereto, or none wherein Divine service shall be usually solemnized every Sunday, and all extra-parochial places whatever having no public chapel wherein banns may be lawfully published or marriage celebrated, shall be deemed and taken to belong to any parish or chapelry having such church or chapel next adjoining, for the purposes of the said recited Act and this Act only; and where banns shall be published in any church or chapel of any parish or chapelry adjoining to any such parish or chapelry where there shall be no church or chapel, or none wherein Divine service shall be solemnized as aforesaid, or to any extra-parochial place as aforesaid, the parson, vicar, minister, or curate publishing such banns shall, in writing under his hand, certify the publication thereof, and act in all things in the same manner as if either of the persons to be married had dwelt in such adjoining parish or chapelry.

4. If the church of any parish, or chapel of any chapelry, wherein marriages may have been usually solemnized, be in ruins, or be demolished in order to be rebuilt, or for any other cause, or be under repair, and on such account or for any other reason be disused for public service, it shall be lawful for banns to be proclaimed and marriages to be celebrated in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed or marriage is usually celebrated, or in any place within the limits of the parish or chapelry which shall be licensed by the ordinary of the diocese for the performance of Divine service, during or by reason of the repair or rebuilding or disuse of the church as aforesaid; and where no such place shall be so licensed, then during such period as aforesaid the marriage may be solemnized in the adjoining church or chapel wherein the banns have been proclaimed, or which shall have been specified in the licence; and all marriages heretofore solemnized in other places within the said parishes or chapelries than the said churches or chapels on account of their being in ruins, under repair, or demolished, or taken down in order to be rebuilt, or for any other cause, shall not be liable to have their validity questioned on that account, nor shall the ministers who have so solemnized the same be liable to any ecclesiastical censure, or to any other proceeding or penalty whatsoever.

(*i*) 7 & 8 Vict. c. 81, s. 2 (*ante*, p. 195).

(*k*) Preamble repealed.

THE MARRIAGE LAW (IRELAND) AMENDMENT ACT, 1863.

26 VICT. c. 27.

An Act to amend the Law relating to Marriages in Ireland. [8th June, 1863.]

Whereas it is expedient to alter and amend the provisions of the Marriages (Ireland) Act, 1844, so far as is hereinafter provided: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In case of any party intending marriage under the provisions of the said recited Act or of this Act, no notice of such intended marriage shall be read or published before the guardians of any poor law union in Ireland, or be transmitted by any registrar to the clerk of any such guardians (*l*).

No notice of marriage to be published before Poor Law Guardians.

2. Every notice of an intended marriage given to the registrar under the provisions of the said recited Act or of this Act shall be in the form set forth in the Schedule (A.) to this Act annexed, and shall state,—

Form of notice of marriage to registrar as in Sched. (A.).

- (1) The true name, surname, profession, or condition of each of the persons intending marriage:
- (2) The church, chapel, or place of public worship which the persons intending marriage, or either of them, usually attend:
- (3) The usual dwelling-place of each of them:
- (4) The time, not being less than seven days, during which each has dwelt therein (unless such time is more than one month, in which case it may be so stated):
- (5) The church, chapel, or registered place of public worship, or other place in which the marriage is intended to be celebrated (which must be a place within the district of the registrar to whom the notice is given):
- (6) Whether the marriage is intended to be celebrated by virtue of the registrar's certificate, or by virtue of his licence.

3. The registrar shall then proceed as follows:

- (1) He shall file the notice so given to him, and keep the same with the records of his office;
- (2) He shall forthwith enter a true copy of the notice in his marriage notice book (supplied to him by the Registrar-General);
- (3) He shall keep this book open for the inspection of all persons at all reasonable times, without fee;
- (4) He shall, on the day on which he shall have received such notice, or on the following day at the latest, send by post, in a registered letter, a copy of the notice under his hand,—

Proceedings of registrar.

To the minister of the church, chapel, or registered place of public worship stated in the notice as that in which the marriage is intended to be solemnized; and

To the minister of the church, chapel, or place of public worship which the parties to the marriage, or either of them, usually attend;

Or the registering officer of the Society of Friends, or secretary of a synagogue, by whom respectively the marriage is to be registered, as the case may require;

- (5) When the marriage is intended to be contracted in the office of the registrar, he shall, in addition to sending a copy of the notice to the minister of the church, chapel, or place of public worship as aforesaid, forthwith suspend a copy of the notice, on a printed form properly and legibly filled up, in some conspicuous place in his office, and keep the same so suspended,—in the case of a marriage intended to be celebrated by virtue of a certificate, for twenty-one days,—and in the case of a marriage intended to be celebrated by virtue of a licence, during seven days, next after the day of entry of the notice (*m*);

(*l*) This section virtually repeals 7 & 8 Vict. c. 81, s. 15 (*ante*, p. 198).

(*m*) Amended by 33 & 34 Vict. c. 110, s. 41 (*post*, p. 231).

and the registrar shall be entitled to a fee of one shilling for each registered letter sent by him.

Notice of marriage to be accompanied by a solemn declaration by one of the parties as form in Sched.(B.) (u).

4. Any party intending marriage under the provisions of this Act shall, at the time of giving the registrar the notice required by this Act, make and sign or subscribe a solemn declaration in writing (according to the form set forth in Schedule (B.) to this Act annexed), that he or she believes that there is no impediment of kindred or alliance or other lawful hindrance to the said marriage, and that the parties to the said marriage have for the space of one month immediately preceding the giving of such notice usually attended divine worship in the church, chapel, or meeting house named in such notice, and that the parties to the said marriage, in case the marriage is intended to be had without licence, have for the space of seven days immediately preceding the giving of such notice had their usual place of abode and residence within the district of the registrar or respective registrars to whom such notice or notices, as the case may be, shall be so given; or, in case such marriage is intended to be had by licence, that one of the parties had for the space of fifteen days immediately preceding the giving of such notice had his or her usual place of abode and residence within the district of the registrar to whom such notice shall be so given; and when either of the parties intending marriage, and not being a widower or widow, shall be under the age of twenty-one years, the party making such declaration shall further declare that the consent of the person or persons whose consent to such marriage is by law required has been given, or (as the case may be) that there is no person whose consent to such marriage is by law required; and every declaration so made as aforesaid shall be signed and subscribed by the party making the same, in the presence of the registrar to whom the notice of the marriage is given, who shall attest the same by adding thereto his name, description, and place of abode; and no certificate or licence for marriage shall be issued or granted pursuant to any such notice as aforesaid unless the said notice be accompanied by such solemn declaration duly made and signed or subscribed and attested as aforesaid, and the registrar shall file such declaration, and keep the same with the records of his office.

Certificate not to issue until after 21 days, nor licence to be granted after 7 days.

Registrar-General to furnish registers.

5. The registrar shall not in any case issue a certificate until after the expiration of twenty-one days, or grant a licence until after the expiration of seven days, from the day of entry of the notice by him.

6. The Registrar-General shall furnish to the minister of every registered place of public worship in which marriages may be solemnized, marriage register books in duplicate, and forms for certified copies thereof, as provided under the said recited Act. One copy of every such register book, when filled, shall be delivered to the registrar of marriages of the district in which such registered place of worship is situate, and the other copy shall remain in the custody of such minister, and be kept by him with the other registers of his place of worship.

Place, time, &c., of marriage.

7. Every marriage solemnized by virtue of a registrar's certificate of publication of notice, or of a registrar's licence, according to the usages of any church, denomination, or body of Protestant Christians (o), shall be solemnized,

- (1) By a minister of the church, denomination, or body to which the parties to the marriage, or either of them, shall belong (o);
- (2) In the registered place of public worship named in the notice (o);
- (3) Between the hours of eight in the morning and two in the afternoon;
- (4) With open doors;
- (5) In the presence of two or more credible witnesses besides the officiating minister or person solemnizing the marriage;

and not elsewhere or otherwise. If any person wilfully solemnize a marriage, or pretended marriage, contrary to the present provision, he shall be guilty of felony.

Marriages under this Act good and cognizable.

8. The presence of the registrar shall not be necessary at any marriage celebrated under the provisions of this Act, in any house of worship registered

(u) *Post*, p. 222.

(o) Extended by 36 Vict. c. 16 (*post*, p. 235).

or certified under the said recited Act or this Act; and every such marriage shall be good and cognizable in like manner as any marriage solemnized under the provisions of the said recited Act; nor shall the minister who shall solemnize any such marriage without the presence of the registrar be guilty of felony (*p*).

9. Every minister, immediately after the solemnization of any marriage by him, shall enter in both the duplicate marriage register books of the place of worship in which the marriage is solemnized the requisite particulars respecting such marriage: and every such entry shall be signed by such minister, and by the persons married, and by two witnesses at the least; and such minister shall, in April, July, October, and January, every year, send to the registrar of marriages of the district in which such place of worship is situate, on a printed form (supplied to him by the Registrar-General), a copy, certified by him under his hand, of all entries in the duplicate marriage register books in his keeping made in the quarter of a year then last past, or certify under his hand that no such entry has been made in such quarter, if the case so be.

Entry of marriage by minister in registry books.

10. If any minister neglect or refuse to register as aforesaid any marriage which under this Act it is his duty to register, he shall for such offence be liable to a penalty of forty pounds, recoverable in the same manner in which fines and forfeitures imposed by the said recited Act are now recoverable, with full costs of suit, by any person who shall sue for the same.

Penalty for not registering marriage.

11. Nothing in this Act contained shall authorise any registrar to grant a licence for marriage in any church or chapel in which marriages may be solemnized according to the rites of the United Church of England and Ireland, or in any church or chapel belonging to the said United Church, or licensed for the celebration of divine worship according to the rites and ceremonies of the said United Church (*q*).

Registrar not to grant licences for marriage in certain cases.

12. Any trustee or owner of a separate building (not being a church or chapel belonging to the United Church of England and Ireland) used as a place of public worship by any church, denomination, or body of Protestant Christians, or any officiating minister of any such place of public worship, may certify in writing, signed by him, to the Registrar-General, that such building is so used, and shall at the same time deliver to the Registrar-General a certificate signed by ten householders at the least that such building has been used by them during one year at least as their usual place of public worship, and that they are desirous that such place should be registered, and such trustee, owner, or minister shall countersign such certificate. On the receipt of such certificates the Registrar-General shall register such place of public worship in the general registry office, and shall send a certificate of such registration to the person certifying, and to the registrar of the district in which such place of public worship shall be situated, who shall keep the same with the other records of his office; the Registrar-General shall also give public notice of such registration by advertisement in the Dublin Gazette and in a newspaper circulating in the county where the place of public worship is situate. For every such entry, certificate, and publication the Registrar-General shall receive, at the time of delivery to him of the certificates, the sum of one pound.

The registration of places of public worship by trustee, &c.

13. No such marriage as aforesaid shall be solemnized in any such place of public worship without the consent of the minister, or of one of the trustees or owners, deacons, or managers thereof.

Consent of minister, &c., necessary.

14. If any registrar shall neglect or refuse to send a copy of the notice given to him by either of the parties intending marriage to the minister of the church, chapel, or registered place of public worship where the marriage is to be solemnized, and to the minister of the church, chapel, or registered place of public worship where the parties to the marriage, or either of them, usually attend, he shall be liable to a penalty of forty pounds, recoverable as aforesaid, with full costs of suit, by any person who shall sue for the same.

Omission to send notice of marriage, penalty 40*l*.

(*p*) This modifies 7 & 8 Vict. c. 81, s. 29 (*ante*, p. 202). Cf. 61 & 62 Vict. c. 58, s. 15 (*ante*, p. 135).

(*q*) See 33 & 34 Vict. c. 110, s. 33 (*post*, p. 228).

Penalty on making false declaration, or giving false notice.

Not to alter provisions of existing Act, except where at variance with this Act.

Commencement of Act.

Limitation of Act.

15. Any person who shall knowingly or wilfully make any false declaration, or sign any false notice, required by the said recited Act or by this Act, for the purpose of procuring any marriage, shall suffer the penalties of perjury.

16. Except where the provisions of the said recited Act are expressly altered by or are at variance with the provisions of this Act, nothing herein contained shall alter, repeal, or affect, or be construed so as in any manner to alter, repeal, or affect, any of the provisions or clauses contained in the said Act, but, except as aforesaid, the same provisions and clauses respectively shall be and remain in full force and effect as if this Act had not been passed; and this Act shall, except as aforesaid, be considered as incorporated with the same provisions and clauses, and be construed in connection therewith.

17. This Act shall come into operation on the first day of August One thousand eight hundred and sixty-three, and none of the provisions thereof shall take effect previous to that day.

18. This Act shall not apply to England or Scotland.

SCHEDULE (A.)

NOTICE OF MARRIAGE.

To A.B., Registrar [or Deputy Registrar] of the District of _____ in the County of _____

I the undersigned *James Smith* hereby give you Notice, that a Marriage is intended to be had, without [or by, as the Case may be] Licence, within Three Calendar Months from the Date hereof, between me and the other Party named and described; (that is to say,)

Name and Surname.	Condition.	Rank or Profession.	Age	Dwelling Place.	Length of Residence.	Church, Chapel, or Place of Worship which the Parties usually attend respectively.	Church, Chapel, Place of Public Worship, or Building in which the Marriage is to be solemnized.	District and County in which the Parties respectively dwell.
<i>James Smith</i>	<i>Widower</i>	<i>Ironmonger</i>	<i>Twenty-five Years.</i>	<i>23, Trinity Street, Parish of St. Andrew's, City of Dublin.</i>	<i>Seven Days [or Fifteen Days, as the Case may be].</i>	<i>Primitive Wesleyan Methodist Chapel, Great George Street.</i>		<i>District of — South District. County of — the City of Dublin.</i>
<i>Martha Green</i>	<i>Spinster</i>	- - -	<i>Nineteen Years.</i>	<i>Grove Farm, Townland of Grove, Parish of Maryborough.</i>	<i>More than One Month.</i>	<i>Sion Chapel, Maryborough.</i>	<i>Sion Chapel, Maryborough.</i>	<i>District of Maryborough, County of Queen's County.</i>

Witness my Hand this [] day of [] One thousand eight hundred and [sixty-three.] (Signed) *James Smith.*

(The Particulars in this Schedule to be entered according to the Fact.)

Sect. 4.

SCHEDULE (B.).

I, the undersigned, James Smith, of 23, Trinity Street, parish of St. Andrew's, City of Dublin, hereby solemnly declare that I believe there is no impediment of kindred or alliance, or other lawful hindrance, to my marriage with Martha Green, of Grove Farm, Townland of Grove, Parish of Maryborough, and that we, the above-named James Smith and Mary Green, have for the space of one month immediately preceding the giving the notice of our marriage usually attended divine worship in the church, chapel, or meeting-house belonging to the [*here insert the church, denomination, or body of Protestant Christians to which such place of worship shall belong (as the case may be)*] "in the parish of _____," or "ecclesiastical district of _____," within the south district of _____, and county of the City of Dublin.

And that I, the above-named James Smith, have for the space of fifteen days immediately preceding the giving the notice of marriage had my usual place of abode and residence [*if the marriage is intended to be had in a church or chapel of the United Church of England and Ireland, insert the following words, "in the parish of _____," or "in the ecclesiastical district of _____," (as the case may be), and add the name of the parish or ecclesiastical district in which one of the parties resides*] within the south district of _____, County of the City of Dublin :

And I further declare that I am not a minor under the age of twenty-one years, and that the other party herein named and described is not a minor under the age of twenty-one years [*if one or both of the parties be under age these words must be expunged*], [*or as the case may be*] :

And I further declare that she [*or, I*], the said Martha Green, not being a widow [*or, widower*], is [*or, am*] a minor under the age of twenty-one years, and that the consent of George Graham, whose consent to her [*or, my*] marriage is required by law, has been duly given and obtained thereto [*or "that there is no person whose consent to her [*or, my*] marriage is by law required" (as the case may be)*] :

And I make the foregoing declarations solemnly and deliberately, conscientiously believing the same to be true, pursuant to the provisions of an Act passed in the _____ year of Her Majesty Queen Victoria, Chapter _____, intituled "an Act to amend the law relating to marriages in Ireland," well knowing that every person who shall knowingly or wilfully make and sign or subscribe any false declaration, or who shall sign any false notice for the purpose of procuring any marriage under the provisions of the said Act above mentioned, or of any Act therein recited, shall suffer the penalties of perjury. In witness whereof I have hereunto set and subscribed my hand this fifth day of August, 1863.

JAMES SMITH.

Signed and declared by the above-named
James Smith in the presence of

JAMES CASEY, of [*insert place of abode*],

Registrar of the South District, County of the City of Dublin.

REGISTRATION OF MARRIAGES (IRELAND) ACT, 1863.

26 & 27 VICT. c. 90.

An Act to provide for the registration of marriages in Ireland. [28th July, 1863.]

Whereas it is expedient that a system of registration of such marriages as are not within the provisions of the Marriages (Ireland) Act, 1844, should be established and maintained in Ireland: Be it enacted, &c., as follows:

Short title.

1. This Act may be cited for all purposes as "The Registration of Marriages (Ireland) Act, 1863."

Commence-
ment of Act.

2. This Act shall commence and take effect from and after the first day of January one thousand eight hundred and sixty-four,

3. The following words and expressions in this Act shall have the meanings hereby assigned to them; that is to say, Interpretation of terms.

“Lord Lieutenant” shall mean the Lord Lieutenant or other Chief Governor or Governors of Ireland:

“General search” shall mean a search during any number of successive days, not exceeding six, without stating the object of search:

“Particular search” shall mean a search over any period not exceeding five years for any given register of marriage.

4. This Act shall extend to Ireland only.

5. The Registrar-General of Marriages appointed under the provisions of the said first-recited Act shall, in sufficient time before the thirty-first day of December one thousand eight hundred and sixty-three, furnish to the guardians of every union printed notices, which the said guardians shall on or before the said thirty-first day of December cause to be fixed or placed on the outside of the several church and chapel doors, or other public and conspicuous buildings or places within their respective unions, and which said notices shall specify the several Acts required to be done for the purpose of registering any marriage under the provisions of this Act. Act to extend to Ireland only.
Registrar-General to furnish to boards of guardians notices setting forth Acts required to be done under this Act.

6. The Registrar-General shall cause to be provided such number of register books and forms as shall be necessary to the execution of this Act; and the said register books shall be of durable materials, and in them shall be printed on each side of every leaf the heads of information herein required to be known and registered in respect of marriages, and every page of each of such books shall be numbered progressively from the beginning to the end of the book, beginning with number one, and every place of entry shall be also numbered progressively from the beginning to the end of the book, beginning with number one, and every entry shall be divided from the following entry by a printed line; and the Registrar-General shall furnish for the use of the registrars a sufficient number of register books of marriages and such other forms as may from time to time be required for the purposes of this Act. Register books to be provided.

7. The several superintendent registrars' and registrars' districts which shall from time to time be made under the provisions of the Registration of Births and Deaths (Ireland) Act shall be the superintendent registrars' and registrars' districts for the purposes of this Act. Registrars, under Registration of Births, &c., Act, to be registrars for purposes of this Act.

8. The Lord Lieutenant, or the Registrar-General with his approbation, shall have power, from time to time as may be deemed expedient, to alter the boundaries of the districts formed under the provisions of the said recited Act passed in the seventh and eighth years of Her Majesty, chapter eighty-one, and to form new districts, and in the event of any new district being so formed to appoint fit persons to be registrars for such districts; and every such registrar shall hold his office during the pleasure of the Registrar-General. Lord-Lieutenant, or Registrar-General with his approbation, may alter boundaries of districts.

9. Every registrar of marriages, appointed under the said recited Act or this Act, shall have the power, subject to the approval of the Registrar-General, to appoint, by writing under his hand, a fit person to act as his deputy in case of the illness or absence of such registrar, and every such deputy registrar while so acting shall have all the powers and duties and be subject to all the provisions and penalties declared by the said recited Act and this Act concerning registrars of marriages, and in case of the death of the registrar shall act as registrar until another be appointed, and every registrar shall be civilly responsible for the acts and omissions of his deputy. Registrar of marriages may, subject to approval of Registrar-General, appoint a deputy.

10. The several superintendent registrars and registrars of the several districts, and their respective deputies, appointed from time to time and acting under the provisions of the said last-recited Act, shall from time to time be the superintendent registrars and registrars of their respective districts for the purposes of this Act, if they think fit to accept such office; and in the event of their refusal to act, the guardians of the union shall appoint a person, with such qualifications as the Registrar-General may declare to be necessary, to be the superintendent registrar or registrar under this Act; and every such superintendent registrar and registrar shall hold his office during the pleasure of the Registrar-General. Registrars under said Act to act for purposes of this Act.

11. In all cases of marriages which may be legally solemnized in Ireland, and which do not come within the provisions of the said Act of the seventh and Provision for marriages not within

provisions of
7 & 8 Vict.
c. 81.

eighth years of Her Majesty, chapter eighty-one, or any Act amending the same, the parties about to contract any such marriage shall produce to the clergyman celebrating the marriage a certificate according to the Form A. in the schedule hereunto annexed, which certificate shall be procured by the parties contracting the marriage, previous to its solemnization, from the registrar of the district appointed under this Act within which such marriage is intended to be solemnized, who shall be bound, as far as possible, without fee or reward, to fill up the said schedule, and it shall be signed by the parties contracting the marriage and by the witnesses present thereat, not being less than two, and also by the said clergyman; and the parties contracting the marriage shall within three days thereafter either deliver or send by post such certificate to the registrar of marriages appointed under this Act for the district wherein the marriage was solemnized; and the husband shall, in case of failure so to deliver or send such certificate, be liable in a penalty not exceeding ten pounds, to be recovered as hereinafter provided.

Persons
unable to
write may
sign by
making a
cross.

12. In case of the inability to write of any person whose signature is required or necessary under this Act, it shall be lawful for such person to make such signature by making a cross or other mark, which shall be made in the presence of the clergyman or two witnesses, who shall attest the same, and such mark shall be in all respects as binding and effectual as the signature of such person, if capable of writing, would have been.

Particulars of
certificates to
be entered
in register
books.

Correction
of erroneous
entries.

13. Every registrar, on receipt of any such certificate, shall forthwith enter the particulars thereof in the register book: Provided always, that if any error shall be discovered to have been committed in the entry of marriage in any register, the person discovering the same shall forthwith give information thereof to the justice or justices at the petty sessions of the district within which such marriage shall have been solemnized, or, if within the Dublin Metropolitan Police District, to a divisional justice or justices within the said district; and it shall be lawful for the said justice or justices, and they are hereby authorised and required, thereupon, or upon otherwise coming to the knowledge of such erroneous entry, to summon before them the person who made and any person concerned in making such erroneous entry or having any knowledge regarding the same, and also any person interested in the effect of such erroneous entry, and to examine all such persons on oath; and if the said justice or justices shall be satisfied that any error has been committed in any such entry, such justice or justices shall, by authority in writing under his or their hands, direct the registrar to correct the erroneous entry; and it shall be lawful for the registrar, and he is hereby required, thereupon to correct the erroneous entry according to the truth of the case by entry in the margin, without any alteration of the original entry; and such marginal entry shall contain a reference to the deposition upon which the said justice or justices directed the correction to be made, and shall be dated on the day on which it is made, and signed by the parties applying for the correction and by the registrar; and in every case the registrar shall make the like alteration in the certified copy of the register book to be made by him as hereinafter provided; provided that in case such certified copy shall have been already made he shall make and deliver in like manner a separate certified copy of the original erroneous entry and of the marginal correction therein made.

Returns.

Certified
copies of
entries of
marriages
to be sent
quarterly, and
the register
books, when
filled, to the
superin-
tendent
registrar.

14. In the months of April, July, October, and January, on such days as shall from time to time be appointed by the Registrar-General, every registrar shall make and deliver to the superintendent registrar of his district, on durable materials, a true copy, certified by him under his hand, according to the Form B. in the schedule to this Act annexed, of all the entries of marriages made during the quarter of a year last preceding the first day of each of the several months hereinbefore mentioned respectively in the register books kept by him, the first of such certified copies to be given in the month of April in the year one thousand eight hundred and sixty-four, and the superintendent registrar shall examine the same, and if found to be correct shall certify the

same under his hand to be a true copy: If there shall have been no marriages registered since the delivery of the last certificate the registrar shall certify the fact, and such certificate shall be delivered to the superintendent registrar as aforesaid, and be countersigned by him: The registrar shall keep safely the register book furnished to him as hereinbefore mentioned until it shall be filled, and shall then deliver it to the superintendent registrar, to be kept by him with the records of his office.

15. Every superintendent registrar shall four times in every year, on such days as shall be named for the purpose by the Registrar-General, send to the Registrar-General all the certified copies of the registers of marriages which he shall have received from the registrars of marriages as aforesaid for the quarter of a year last preceding the first day of each of the several months hereinbefore mentioned respectively in the Form B. in the Schedule to this Act annexed; and the Registrar-General, if it shall appear, by interruption of the regular progression of numbers or otherwise, that the copy of any part of any book has not been duly delivered to him, shall procure, as far as possible, consistently with the provisions of this Act, that the same may be remedied and supplied. The certified copies so sent to the General Register Office shall be thereafter kept in the said office in such order and manner as the Registrar-General, under the direction of the Lord Lieutenant, shall think fit, so that the same may be most readily seen and examined.

Superintendent registrars to send certified copies of registers of marriages to Registrar-General.

16. The Registrar-General shall once in every year transmit to the Lord Lieutenant a general abstract of the numbers of marriages registered during the foregoing year in such form and at such date as the Lord Lieutenant shall from time to time prescribe; and every such annual general abstract shall be laid before Parliament within one month after receipt thereof, or, if Parliament shall not be then sitting, within one month after the commencement of the next Session.

Abstract of registers to be laid annually before Parliament.

17. The Registrar-General shall cause indexes of all the registers herein mentioned to be made and kept in the General Register Office; and every person shall be entitled to search the said indexes between the hours of ten in the morning and four in the afternoon of every day, except Sundays, Christmas Day, and Good Friday, and to have a certified copy of any entry in the said registers; and for every general search of the said indexes the sum of twenty shillings, and for every particular search the sum of one shilling, and for every such certified copy the sum of two shillings and sixpence, shall be paid to the Registrar-General or such other officer as shall be appointed to receive such fees on his account, in addition to the stamp duty of one penny imposed by an Act passed in the twenty-third year of her Majesty, chapter fifteen.

Indexes to be kept at General Register Office. Searches allowed, and certified copies given.

18. Every superintendent registrar shall cause indexes of the register books in his office to be made and kept with the other records of his office. Every person shall be entitled, on such days and at such reasonable hours as shall be directed by the Registrar-General, to search the said indexes, and to have a certified copy of any entry or entries in the said register books, under the hand and seal of the superintendent registrar, on payment of the fees hereinafter mentioned; that is to say, for every general search the sum of five shillings, and for every particular search the sum of one shilling, and for every certified copy the sum of two shillings and sixpence, in addition to the stamp duty of one penny imposed by an Act passed in the twenty-third year of her Majesty, chapter fifteen.

Indexes to be made at every superintendent registrar's Office, and persons allowed to search them.

19. Every person shall be entitled, on such days and at such reasonable hours as shall be directed by the Registrar-General, to search such entries in the register books in the custody of the registrars as shall not have been included in the last preceding return made by such registrar to his superintendent registrar, and to have a certified copy of any such entry or entries, under the hand and seal of the registrar, on payment of the fees hereinafter mentioned; that is to say, for every such search the sum of sixpence, and for every certified copy the sum of two shillings and sixpence, in addition to the stamp duty of one penny imposed by an Act passed in the twenty-third year of her Majesty, chapter fifteen.

Persons entitled to search register books.

Fees.

Superintendent registrars to be paid for the certified copies sent to General Register Office.

20. Every superintendent registrar shall make out an account four times in every year, on such days and for such periods as shall from time to time be appointed by the Registrar-General, of the number of entries in such certified copies so sent by him to the Registrar-General, as provided by this Act, and shall send the said account to the Registrar-General. If on examination, and comparison with the certified copies of the registers or certificates received by the Registrar-General, such account shall be found correct, the superintendent registrar shall be entitled to receive twopence from the Registrar-General for every entry in such certified copies of registers of marriages, which shall be charged by the Registrar-General to the general expenses of his office.

Registrars to make out an account of number of marriages yearly.

21. Every registrar shall make out an account four times in each year, on such days and for such periods as shall from time to time be appointed by the Registrar-General, of the number of marriages which he shall have registered in pursuance of the provisions of this Act, and the superintendent registrar shall verify and sign the same. The guardians of the union in which he shall be registrar, on production of the said account, so verified and signed, shall pay to the said registrar, out of the monies in their hands or power as such guardians, at the rate of sixpence for every entry of marriage included in such account, and the same shall be charged to the union at large, and such guardians shall be and they are hereby empowered to levy off the union at large such sums so paid by them, and such sums shall be included in the rates which such guardians are by law empowered to levy and raise.

Persons making false statements for entry on register to be subject to penalties for perjury.

22. Every person who shall wilfully make or cause to be made, for the purpose of being inserted in any register of marriages, any false statement touching any of the particulars herein required to be known and registered, shall be subject to the same pains and penalties as if he were guilty of perjury.

Sects. 36 and 37 of 24 & 25 Vict. c. 98, incorporated with Act.

23. The 36th and 37th sections of an Act passed in the 24th and 25th years of Her Majesty, intituled "An Act to consolidate and amend the Statute Law of England and Ireland relating to indictable Offences by Forgery," shall be incorporated with and form part of this Act.

Penalty for neglect of registrar to register marriage, &c.

24. Every registrar who shall refuse or without reasonable cause omit to fill up the certificate of marriage or register any marriage of which he shall have received a certificate, and every person having the custody of any register book or any part thereof who shall carelessly lose or injure the same, or carelessly allow the same to be injured whilst in his keeping, shall forfeit a sum not exceeding ten pounds for every such offence.

Penalty for omission to deliver registers to superintendent registrar or Registrar-General.

25. Every person who under the provisions of this Act is required to deliver the registers of marriages or copies of such registers to any superintendent registrar or to the Registrar-General, and who, after being duly required to deliver such register or copies as aforesaid, shall refuse or during one calendar month neglect so to do, shall be liable for every such offence to forfeit a sum not exceeding ten pounds.

Penalties how recoverable.

26. Any penalty recoverable under the provisions of this Act shall be recoverable in a summary way, with respect to the police district of Dublin metropolis, subject and according to the provisions of any Act regulating the powers and duties of justices of the peace for such district, or of the police of such district, and, with respect to other parts of Ireland, before a justice or justices of the peace sitting in petty sessions, subject and according to the provisions of "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

14 & 15 Vict. c. 98.

Not to affect law of marriage in Ireland.

27. Nothing in this Act contained shall affect the law of marriage in Ireland.

SCHEDULE.

FORM A.

18 .—Marriages solemnized at the Roman Catholic chapel of _____, in the registrar's district of _____, in the union of _____, in the county of _____.

No.	When Married.	Name and Surname.	Age.	Condition.	Rank or Profession.	Residence at the Time of Marriage.	Father's Name and Surname.	Rank or Profession of Father.
1	27 March, 18 .	Patrick Donovan.	Of full Age.	Bachelor.	Carpenter	3, South Street.	Peter Donovan.	Upholsterer.
		Mary O'Brien.	Minor	Spinster.	.....	17, High Street.	Laurence O'Brien.	Butcher.

Married in the Roman Catholic chapel of _____ according to the rites and ceremonies of the Roman Catholic Church,

By me, [*William Jackson*].

This marriage was solemnized between us, { *Patrick Donovan,* } in the presence { *Dennis Donovan.*
nized between us, { *Mary O'Brien,* } of us, { *Lawrence O'Brien.*

FORM B.

I, _____, registrar of births, death, and marriages in the district of _____ in the union of _____ in the county of _____, do hereby certify, that this is a true copy of the registrar's book of marriages within the said district from the entry of the marriage of _____, No. _____, to the entry of the marriage of _____, No. _____.

Witness my hand, this day of 18 .

, Registrar.

[The particulars in this schedule to be entered according to the fact.]

THE MATRIMONIAL CAUSES AND MARRIAGE LAW (IRELAND)
AMENDMENT ACT, 1870.

33 & 34 VICT. c. 110.

An Act to provide for the administration of the Law relating to Matrimonial Causes and Matters, and to amend the Law relating to Marriages, in Ireland.

[10th August, 1870.]

[*Recital of the Disestablishment of the Church of Ireland and abolition of ecclesiastical jurisdiction in matrimonial and other causes.*]

Be it therefore enacted as follows:—](*r*)

1. This Act may be cited for all purposes as “The Matrimonial Causes and Short title.
Marriage Law (Ireland) Amendment Act, 1870.”

2. This Act shall commence and have effect on the first day of January One thousand eight hundred and seventy-one. Commence-
ment of Act.

3. This Act shall apply to Ireland only.

4. In this Act—

The term "bishop of the said Church" shall include any person who for the time being may succeed to the exercise and discharge of the episcopal functions of any person who at the passing of the said Irish Church Act was a bishop thereof:

(r) Words in brackets repealed by 56 Vict. c. 14.

The term "clergy and laity of the said Church" shall include clergy and laity in communion with bishops of the said Church :

The term "Protestant Episcopalian" shall mean a member of any of the churches following ; (that is to say,)

The said Church, the Church of England, the Episcopal Church of Scotland, and any other Protestant Episcopal Church.

PART I. (s)

PART II.

AMENDMENT OF MARRIAGE LAW.

Churches in which marriages may be celebrated.

32. Marriage between persons both of whom are Protestant Episcopalians may be solemnized in any of the churches or chapels following :

1. In any church or chapel in which at the time of the passing of this Act marriages may be solemnized according to the rites of the United Church of England and Ireland, and in which divine service, according to the rites of the said church as hereinbefore defined, shall continue to be performed ; or,
2. In any church or chapel which, after the passing of this Act, shall be licensed for the celebration of marriages in manner by this Act provided.

Provisions relating to the solemnization of marriages.

33. The provisions following shall apply to all marriages solemnized in any of the said churches or chapels :

1. The ceremony of marriage shall be preceded by—

(1.) Publication of banns in any church or chapel in which a marriage may be solemnized under the provisions of this Act, which publication shall be made in the manner and according to the rules at the time of the passing of this Act in force in Ireland in relation to the publication of banns in parish churches and chapels of the United Church of England and Ireland ; or by

(2.) Licence or special licence granted in manner by this Act provided ; or by

(3.) Certificate from the registrar to be granted by him in like manner and subject to the like conditions as such certificate may, at the time of the passing of this Act, be granted :

2. The several provisions contained in the Marriages (Ireland) Act, 1844 (*t*), and in the Marriage Law Amendment Act, 1863 (*u*), and which at the time of the passing of this Act are applicable to persons in holy orders of the United Church of England and Ireland, and relate to the celebration of marriages by them, shall (except so far as the same are expressly altered or varied by this Act) apply to and be in force with respect to the celebration of marriages by any clergyman having authority to officiate, or who shall be permitted by such clergyman to officiate, in any aforesaid church or chapel in which marriage may be solemnized under the provisions of this Act, save only that such marriages may be celebrated at any time between the hours of eight o'clock in the forenoon and two o'clock in the afternoon.

Licence of churches.

34. Every bishop of the said church may from time to time, by writing under his hand, subject to the approval of the Lord Lieutenant or other general governor or governors of Ireland, license any church or chapel for the celebration of marriages in any district within his episcopal superintendence to be named in such licence between persons one or both of whom shall reside within the limits of such district ; and every such bishop shall, as soon as may be after

(s) Part I. deals exclusively with matrimonial causes and matters.

(t) *Ante*, p. 194.

(u) *Ante*, p. 217.

the granting of each such licence, certify the granting thereof to the Registrar-General of Marriages in Ireland, and shall send a copy of such licence to the said Registrar-General, who shall keep the same with the other records of his office: provided always, that a person who shall have dwelt for fourteen days prior to the ceremony within the limits of the district shall be deemed to reside therein.

35. Every bishop of the said church may, by writing under his hand, nominate persons (*x*) to issue licences for marriages, and, by the same or other writings, define in and for what districts within the episcopal superintendence of such bishop such persons are respectively to issue the same, and in and for the district at the time of the passing of this Act known as the exempt jurisdiction of Newry and Morne the person at the time of the passing of this Act holding the office of vicar-general of the said exempt jurisdiction shall have power to issue licences for marriage, and shall continue so to do until the said district is included within the episcopal superintendence of some bishop of the said church; and every such licence shall be held to authorise marriage in any churches and chapels situate within such districts respectively in which marriages may be solemnized under the provisions of this Act, and which shall be specified in such licences, whenever both of the parties shall be Protestant Episcopalians, and resident within such districts; and such licences shall be in the form No. I. in the Schedule (A.) to this Act annexed, or to the like effect; and for every such licence such person shall be entitled to have for his own benefit, of the party requiring the same, such fee, not exceeding the sum of five shillings, as may from time to time be appointed in that behalf by any general synod or convention of the bishops, clergy, and laity of the said church; and in any case in which such person shall refuse to grant such licence, the person applying for the same shall be entitled to appeal to the bishop by whom such person shall have been so appointed, or his successor, who shall thereupon either confirm the refusal or direct the grant of the licence; and every person so appointed shall four times in every year, on such days as shall be appointed by the Registrar-General, make a return to the Registrar-General of every licence granted by him since his last return, and of the particulars stated concerning the parties: Provided always, that no such person shall grant any such licence until he shall have given security by his bond in the sum of one hundred pounds to the Registrar-General for the due and faithful execution of his office.

Licences for marriages.

A licence for marriage shall not be granted by any such person until seven days after notice shall have been given by one of the parties who shall have dwelt for not less than seven days then next preceding in the district named in that notice (*y*), under his or her hand, in the form No. II. in the Schedule (A.) to this Act annexed, or to the like effect, to such person, and such person shall forthwith send a copy of such notice to the clergyman officiating at the places of worship where the parties intending marriage have been in the habit of attending.

Every person so appointed shall file and keep with the records of his office every such notice, and shall also forthwith enter a true copy of such notice fairly in a book to be for that purpose furnished to him by the Registrar-General, to be called "The Marriage Notice Book," which book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same, and for entering every such notice the person so appointed shall be entitled to have such fee, not exceeding one shilling, as may be from time to time appointed in that behalf by any such general synod or convention as aforesaid over and above the accustomed fee for granting the licence.

Whenever a marriage shall not be had within three calendar months after the notice shall have been so given to the person so appointed as aforesaid, the notice, and any licence which may have been granted thereupon, shall be utterly void.

(*x*) As to power to appoint deputies, see 34 & 35 Vict. c. 49, s. 29 (*post*, p. 235).

(*y*) See 34 & 35 Vict. c. 49, s. 26 (*post*, p. 234).

Before any licence for marriage shall be granted by any such person one of the parties intending marriage shall appear personally before him, and shall make and subscribe an oath or make affirmation, which oath or affirmation such person is hereby authorised to administer, that he or she believeth that there is not any impediment of kindred or alliance or other lawful hindrance to the said marriage and that one of the said parties hath for the space of fourteen days immediately before the day of the grant of such licence had his or her usual place of abode within the district attached in manner herein provided, for the purpose of celebration of marriages, to the church or chapel in which such marriage is to be solemnized, and that they are both of the full age of twenty-one years, or, when either of the parties shall be under the age of twenty-one years, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is no person having authority to give such consent, or that such person is a widower or widow, as the case may be.

Power to bishop
to grant special
licences.

36. When both the parties about to contract marriage are Protestant Episcopalians, any bishop of the said church may grant special licences to marry at any convenient time in any place within his episcopal superintendence.

Power to
certain per-
sons to grant
special
licences.

37. Special licences to marry at any convenient time at any place in Ireland may be granted to parties about to contract marriage by any of the persons following; (that is to say,)

The moderator of the General Assembly of the Presbyterian Church in Ireland:
The moderator of the Remonstrant Synod of Ulster:
The moderator of the Presbytery of Antrim:
The moderator of the Northern Presbytery of Antrim:
The moderator of the Synod of Munster:
The moderator of the Eastern Reformed Presbyterian Synod:
The moderator of the United Presbyterian Presbytery of Ireland:
The moderator of the Secession Church in Ireland:
The moderator of the Reformed Presbyterian Synod of Ireland:
The chairman of the Congregational Union of Ireland:
The president or head of the Methodist or Wesleyan Church:
The president or head of the Methodist New Connexion Church (z):
The president or head of the Association of the Baptist Churches in Ireland:
The clerk to the yearly meeting of the Society of Friends in Ireland:

Provided always, that the parties to whom any such special licence is granted are both members of the same church as the moderator, chairman, president, head or clerk granting such special licence (a).

Legislation
of marriages
of persons of
different
religious
persuasions.

38. A marriage may, notwithstanding anything to the contrary hereinbefore in this Act contained, be lawfully solemnized by a Protestant Episcopalian clergyman between a person who is a Protestant Episcopalian and a person who is not a Protestant Episcopalian, and by a Roman Catholic clergyman between a person who is a Roman Catholic and a person who is not a Roman Catholic (b), provided the following conditions are complied with:

1st. That such notice is given to the registrar and such certificate is issued as at the time of the passing of this Act is required by the Marriages (Ireland) Act, 1844, as amended by the Marriage Law (Ireland) Amendment Act, 1863, in every case of marriage intended to be solemnized in Ireland according to the rites of the United Church of England and Ireland, with the exception of marriages by licence or special licence or after publication of banns:

2d. That the certificate of the registrar is delivered to the clergyman solemnizing such marriage at the time of the solemnization of the marriage:

(z) For the words in italics are substituted "The secretary of the Conference of the Methodist or Wesleyan Church in Ireland" (34 & 35 Vict. c. 49, s. 21: *post*, p. 233).

(a) The stamp duty on such licence is 5*l*. (54 & 55 Vict. c. 39).

(b) See 34 & 35 Vict. c. 49, s. 26 (*post*, p. 234).

3d. That such marriage is solemnized in a building set apart for the celebration of divine service according to the rites and ceremonies of the religion of the clergyman solemnizing such marriage, and situate in the district of the registrar by whom the certificate is issued :

4th. With open doors :

5th. That such marriage is solemnized between the hours of eight in the forenoon and two in the afternoon in the presence of two or more credible witnesses.

39. [There shall be repealed so much of an Act of Parliament of Ireland passed in the nineteenth year of the reign of King George the Second, chapter thirteen, as provides that a marriage between a Papist and any person who hath been or hath professed himself or herself to be a Protestant at any time within twelve months before such celebration of marriage, if celebrated by a Popish priest, is to be void ; but(c)] any marriage solemnized by a Protestant Episcopalian clergyman between a person who is a Protestant Episcopalian and a person who is not a Protestant Episcopalian, or by a Roman Catholic clergyman between a person who is a Roman Catholic and a person who is not a Roman Catholic, shall be void to all intents in cases where the parties to such marriage knowingly and wilfully intermarried without due notice to the registrar, or without certificate of notice duly issued, or without the presence of two or more credible witnesses, or in a building not set apart for the celebration of divine service according to the rites and ceremonies of the religion of the clergyman solemnizing such marriage.

Avoidance of marriage in wilful violation of the Act.

40. No Protestant Episcopalian clergyman and no Roman Catholic clergyman shall be subject to any punishment, pain, or penalty whatever for solemnizing a marriage in pursuance of and in accordance with the provisions of this Act.

Exemption of priest from penalty.

41. Section three of the Marriage Law (Ireland) Amendment Act, 1863 (d), shall be amended in manner following ; (that is to say,)

Amendment of sect. 3 of 26 Vict. c. 27.

Where the marriage is intended to be contracted in the office of the registrar, and where there is not any minister of the church, chapel, or place of public worship which the parties to the marriage, or either of them, usually attend, and where the parties to the marriage are not Jews or members of the Society of Friends, the registrar shall proceed as follows : he shall cause a copy of the notice given to him to be published, at the expense of the parties intending marriage, once at least in two consecutive weeks next after he has received such notice in some newspaper circulating in the district in which such marriage is intended, or if there is not any newspaper circulating in such district, then in some newspaper circulating in the county in which such district is situate ; any registrar neglecting or refusing to publish such notice in manner aforesaid shall be liable to a penalty of forty pounds, recoverable in like manner as penalties under the said Act.

42. Except where the provisions of the Marriage (Ireland) Act, 1844 (e), and the Marriage Law (Ireland) Amendment Act, 1863 (d), are expressly altered by or are at variance with this Act, nothing herein contained shall alter, repeal, or affect the provisions of the said Acts respectively ; and this Act shall, except as aforesaid, be considered as incorporated with the said Acts, and be construed together with the same.

This Act and 7 & 8 Vict. c. 81, and 26 Vict. c. 27, to be construed together.

(c) Words in brackets repealed in 1883 (Stat. Law Rev.).

(d) *Ante*, p. 217.

(e) *Ante*, p. 194.

Sect. 35.

SCHEDULE (A.).

No. I. FORM OF LICENCE.

A. B., appointed to issue licences for marriages in the district of under the provisions of the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870, to C. D. of and E. F. of sendeth greeting.

Whereas ye are minded, as it is said, to enter into a contract of marriage under the provisions of the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870, and are desirous that the same may be speedily and publicly solemnized: And whereas you C. D. [*or E. F.*] have made and subscribed a declaration under your hand that you believe there is no impediment of kindred or alliance or other lawful hindrance to the said marriage, and that you C. D. [*or E. F.*] have [*or has*] had your [*or his or her*] usual place of abode for the space of fourteen days last past within the district of (), and [*in cases where either party is under age, and not a widower or widow*] that you C. D. [*or E. F.*] are [*or is*] under the age of twenty-one years, and that the consent of G. H., whose consent to your [*or his or her*] marriage is required by law, has been obtained thereto [*or that there is no person having authority to give such consent*], *or where a party so under age is a widower or widow*, that you C. D. [*or E. F.*] are [*or is*] under twenty-one years of age, but are [*or is*] a widower or widow [*as the case may be*]: I do hereby grant unto you full licence, according to the authority in that behalf given to me by the said Act, to proceed to solemnize such marriage, provided that the said marriage be publicly solemnized in the presence of two witnesses, within three calendar months from the [*here insert the date of the receipt of the notice by the person issuing the licence*] in the [*here describe the building in which the marriage is to be solemnized*], between the hours of eight in the forenoon and two in the afternoon. Given under my hand, this day of one thousand eight hundred and (Signed) A. B.

No. II. NOTICE OF MARRIAGE.

To A. B. [*or C. D.*] appointed to issue licences for marriages in the district of under the provisions of the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870.

I hereby give you notice that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described; (that is to say,)

Name.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.	Church or Building in which Marriage is to be solemnized.	District and County in which the other Party resides when the Parties dwell in different Districts.
Lucius Smith ...	Widower	Carpenter	Of full Age.	High Street, Roscrea.	23 Days.	Sion Chapel, Roscrea, Tipperary.	Maryborough, Queen's County.
Margaret Shaw.	Spinster	.....	Minor	Grove Farm, near Maryborough.	More than a Month.		

Witness my hand, this [*sixth*] day of [*May, 1871*].
(Signed) Lucius Smith.

[The particulars in this schedule to be entered according to the fact.]

THE MARRIAGE LAW (IRELAND) AMENDMENT ACT, 1871.

34 & 35 VICT. C. 49.

An Act to amend the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870.

[13th July, 1871.]

Be it enacted, &c. as follows:—

1. This Act may be cited for all purposes as “The Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1871,” and the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870, and this Act may be cited together for all purposes as “The Matrimonial Causes and Marriage Law (Ireland) Amendment Acts, 1870 and 1871.”

Short title.

2. This Act and the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870, so far as the same is not inconsistent with this Act, shall be construed together as one Act.

Construction of Act.

Sects. 3—20 so far as in force relate solely to matrimonial causes and matters.

21. Section 37 of the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870 (*f*), shall be construed as if the words “the President or Head of the Methodist or Wesleyan Church” were omitted from the said section, and the words “the Secretary of the Conference of the Methodist or Wesleyan Church in Ireland” were inserted instead thereof in the said section.

Amendment of 33 & 34 Vict. c. 110, s. 37.

22. In all cases of marriages which may be legally solemnized under the authority of a special licence granted in pursuance of the provisions of the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870 (*f*), the parties about to contract any such marriage shall produce to the clergyman or minister celebrating the marriage, or, in case the parties are members of the Society of Friends, to the registering officer of the said Society of Friends for the district in which the same is intended to be solemnized, a certificate according to the form in the schedule hereunto annexed, or to the like effect, which certificate shall be procured by the parties contracting the marriage, previous to its solemnization, from the registrar of the district within which such marriage is intended to be solemnized, who shall be bound to fill up the said form, and which certificate shall be signed by the parties contracting the marriage and by the witnesses present thereat, not being less than two, and also by the said clergyman, minister, or registering officer; and the parties contracting the marriage shall within three days thereafter deliver or send by post such certificate to the Registrar-General of Marriages; and the husband shall, in case of failure so to deliver or send such certificate, be liable in a penalty not exceeding ten pounds, to be recovered in manner provided by the Registration of Marriage (Ireland) Act, 1863 (*g*), for the recovery of penalties.

A certificate to be produced in all cases of marriages by special licence.

23. Every registrar, on receipt of any such certificate, shall forthwith enter the particulars thereof in the register book: Provided always, that if any error shall be discovered to have been committed in the entry of marriage in any register, the person discovering the same shall forthwith give information thereof to the justice or justices at the petty sessions of the district within which such marriage shall have been solemnized, or, if within the Dublin Metropolitan Police District, to a divisional justice or justices within the said district; and it shall be lawful for the said justice or justices and they are hereby authorised and required, thereupon, or upon otherwise coming to the knowledge of such erroneous entry, to summon before them the person who made and any person concerned in making such erroneous entry or having any knowledge regarding the same, and also any person interested in the effect of such erroneous entry, and to examine all such persons on oath; and if the said justice or justices shall be satisfied that any error has been committed in any such entry, such justice or justices shall, by authority in writing under his or their hands, direct the registrar to correct the erroneous entry; and it shall be

Particulars of certificates to be entered in register books. Corrections of erroneous entries.

(*f*) *Ante*, p. 230.(*g*) 26 & 27 Vict. c. 90 (*ante*, p. 222).

lawful for the registrar, and he is hereby required, thereupon to correct the erroneous entry according to the truth of the case, by entry in the margin, without any alteration of the original entry; and such marginal entry shall contain a reference to the deposition upon which the said justice or justices directed the correction to be made, and shall be dated on the day on which it is made, and signed by the parties applying for the correction, and by the registrar; and in every case the registrar shall make the like alteration in the certified copy of the register book; provided that in case such certified copy shall have been already made, he shall make and deliver in like manner a separate certified copy of the original erroneous entry and of the marginal correction made therein.

Marriages by special licence under 33 & 34 Vict. c. 110, valid.

Persons may be nominated to issue licences for marriage in the Roman Catholic Church.

Power to issue licences for mixed marriage.

Who may solemnize mixed marriages.

Licence in lieu of registrar's certificate.

Amendment of sect. 13 of 7 & 8 Vict. c. 81, as to marriages according to Jewish usage.

24. All marriages legally solemnized under the authority of special licences granted in pursuance of the provisions of the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870 (*h*), shall be deemed to be and shall be valid and effectual to all intents and purposes.

25. Every bishop of the Roman Catholic Church may, by writing under his hand, nominate persons to issue licences for marriage in cases where both or either of the parties intending to intermarry are or is a Roman Catholic: Provided that when only one of the parties is a Roman Catholic, notice in writing shall be given by one of the parties to the person empowered to issue such licences seven days before the licence shall issue; and the person receiving such notice shall forthwith send by post a copy thereof to the clergymen officiating at the places of worship where the parties intending marriage have been in the habit of attending.

26. Any person who, under the provisions of the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870 (*h*), is or shall be empowered to issue licences for marriage, may issue such licences in cases where only one of the parties intending to intermarry is a Protestant Episcopalian, in the same manner and subject to the same rules as are therein prescribed in cases where both the parties are Protestant Episcopalians; and any licence heretofore or hereafter issued under the said Act, or under the provisions of this present section, is hereby declared regular and valid when one of the parties shall, for seven days previous to the giving of notice of such intended marriage, have resided in the district of the person issuing such licence (*i*).

27. Whenever a licence for the marriage of a Roman Catholic with a person not a Roman Catholic shall have been issued, pursuant to the provisions of sections twenty-five or twenty-six of this Act, such marriage may lawfully be solemnized by a Roman Catholic clergyman between such persons; and whenever such licence shall, pursuant to the provisions of either of said sections, have been issued for the marriage of a Protestant Episcopalian with a person not a Protestant Episcopalian, such marriage may lawfully be solemnized by a Protestant Episcopalian clergyman; and when any of such licences shall have been issued it shall not be necessary to obtain any certificate from the registrar, and every such licence shall have the same force and effect as under the provisions of the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870 (*h*), the certificate of the registrar would have had.

28. Whereas by section 13 of the Marriages (Ireland) Act, 1844 (*k*), it was amongst other things enacted that in every case of marriage intended to be solemnized in Ireland according to the usages of Jews, there should be stated in the notice or notices required by the said section to be given to the registrar or registrars the building in which the marriage is to be solemnized, which building is by the said section required to be within the district within which one of the parties intending marriage shall have dwelt for the time prescribed by the said section, and it is expedient that the provisions of the said section should be amended: Be it enacted, that from and after the passing of this Act, notwithstanding anything in the said section contained, it shall not be

(*h*) *Ante*, p. 230.

(*i*) 33 & 34 Vict. c. 110, s. 38 (*ante*, p. 230).

(*k*) *Ante*, p. 198.

29. In case of sickness or unavoidable absence of any person duly nominated (¹) to issue licences for marriages in Ireland, it shall be lawful for such person, with the approval in writing of the person or authority by whom he was appointed, or of the person or authority for the time being exercising the functions of such person or authority, to appoint a fit and proper person to act as his deputy for any period not exceeding two calendar months at one time, and every such deputy during the time for which he is so appointed shall have all the powers to issue licences for marriage, and shall perform all the duties and be subject to all the obligations and liabilities in relation to such licences of the person by whom he is so appointed.

Persons
nominated to
issue licences
may in case
of sickness,
&c. appoint
a deputy.

Sect. 22.

No.	When Married.	Name and Surname.	Age.	Condition.	Rank or Profession.	Residence at the Time of Marriage.	Father's Name and Surname.	Rank or Profession of Father.
1	27 March, 18 .	Patrick Donovan.	Of full Age.	Bachelor.	Carpenter	3, South Street.	Peter Donovan.	Upholsterer.
		Mary O'Brien.	Minor	Spinster.	...	17, High Street.	Laurence O'Brien.	Butcher.

Married at _____, of _____ according to the rites and ceremonies of _____ By me, [*William Jackson*].

This marriage was solemnized between us, { *Patrick Donovan,* } in the presence of us, { *Dennis Donovan,*
{ *Mary O'Brien,* } { *Laurence O'Brien.*

36 VICT. c. 16.

[15th May, 1873.]

And whereas it is expedient to remove such doubts, and to make provision for the solemnization of marriages between members of any such church or religious community in manner following :

Be it therefore enacted, &c. as follows:—](m)

1. All the provisions of the Marriage Law (Ireland) Amendment Act, 1863 (*n*), relating to the registration of places of public worship shall be deemed to be provisions of

(7) See 33 & 34 Viet. c. 110, s. 35 (*ante*, p. 229).

(m) Words in brackets repealed by 56 Vict. c. 54.

(n) 26 Viet. c. 27 (*ante*, p. 217).

26 Vict. c. 27,
and 7 & 8 Vict.
c. 81.

Certain
marriages
declared
valid.

Short title.

Construction
of Act.

extend and apply to places of public worship used by any such church or religious community as aforesaid; and all the provisions of the said Act, and of the Act passed in the seventh and eighth years of the reign of her present Majesty, chapter eighty-one, and of the Acts amending and extending the said Acts or either of them, relating to marriages between persons one or both of whom shall belong to any church, denomination, or body of Protestant Christians, so far as the same are now in force and applicable, shall be deemed to extend and shall extend and apply to marriages between persons one or both of whom shall belong to any such church or religious community as aforesaid.

2. Any marriage heretofore solemnized between members of any such church or religious community as aforesaid which would have been legal and valid had the parties to such marriage been Protestant Episcopalians within the meaning of the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870, shall be and be deemed valid to all intents and purposes, notwithstanding that such parties were not Protestant Episcopalians at the time of such marriage.

3. This Act may be cited for all purposes as the Marriage Law (Ireland) Amendment Act, 1873; and the said Act of the twenty-sixth year of the reign of her present Majesty, chapter twenty-seven, and this Act, may be cited together for all purposes as the Marriage Law (Ireland) Amendment Acts, 1863 and 1873.

4. This Act and the said Act of the twenty-sixth year of the reign of her present Majesty, chapter twenty-seven, so far as the same is not inconsistent with this Act, shall be construed together as one Act.

THE FOREIGN MARRIAGE ACT, 1892 (*Ante*, p. 119).

THE MARRIAGE WITH FOREIGNERS ACT, 1906 (*Ante*, p. 158).

THE DECEASED WIFE'S SISTER MARRIAGE ACT, 1907.
(7 EDW. 7, c. 47.)
(*Ante*, p. 162.)

THE NAVAL MARRIAGES ACT, 1908 (*Ante*, p. 163).

IV. MARRIAGES VALIDATION ACTS (UNITED KINGDOM).
ACTS CONFIRMING OR VALIDATING PARTICULAR MARRIAGES.

Regnal Year, Session and Chapter.	Marriages to which the Acts relate.
1761. 21 Geo. 3, c. 53	Before 1st August, 1781.
1804. 44 Geo. 3, c. 77	Before 25th March, 1805, in churches or chapels built or consecrated since 26 Geo. 2, c. 33.
1804. 44 Geo. 3, c. lxxxviii. . .	At Voylas.
1807. 47 Geo. 3, sess. 2, c. lxxvi.	At Wallsend.
1808. 48 Geo. 3, c. 127.	Before 23rd August, 1808, in certain churches or chapels built or consecrated since 26 Geo. 2, c. 33.
1818. 58 Geo. 3, c. 84	Certain marriages in India.
1822. 3 Geo. 4, c. 75	Solemnized without consents required by law.

Regnal Year, Session and Chapter.	Marriages to which the Acts relate.
1823. 4 Geo. 4, c. 5	Under licences granted by certain unauthorized persons.
1823. 4 Geo. 4, c. 91	Certain marriages solemnized abroad (<i>o</i>).
1825. 6 Geo. 4, c. 5	In certain churches and chapels in England erected, &c. since 26 Geo. 2, c. 33.
1825. 6 Geo. 4, c. 92, s. 1.....	
1830. 11 Geo. 4 & 1 Will. 4, } c. 18, ss. 1, 45. }	
1833. 3 & 4 Will. 4, c. 45	Solemnized in Hamburg according to rites of Church of England in British chapel or other place before witnesses (<i>p</i>).
1836. 5 & 6 Will. 4, c. 113 .. }	Of Presbyterians in Ireland (<i>q</i>).
1843. 6 & 7 Vict. c. 39	
1844. 7 & 8 Vict. c. 81, s. 83.. }	
1844. 7 & 8 Vict. c. 56, s. 3 ..	In certain district chapelries in England.
1847. 10 & 11 Vict. c. 58.....	Of Quakers and Jews; contracted before 1st July, 1837, in England, and before 1st April, 1847, in Ireland (Henriques, Jewish Marriage and English Law, p. 25).
1851. 14 & 15 Vict. c. 97, s. 25 .	In certain churches.
1853. 16 & 17 Vict. c. 122	In Church of Holy Trinity, Hulme (Manchester).
1854. 17 & 18 Vict. c. 88.....	In Mexico.
1855. 18 & 19 Vict. c. 66.....	In Christ Church, Todmorden (Rochdale).
1855. 18 & 19 Vict. c. 81, s. 13.	In certain unregistered places of worship.
1856. 19 & 20 Vict. c. 70.....	In Church of Coatham (Kirkleatham).
1858. 21 & 22 Vict. c. 46.....	At Moscow, Ningpo, and Tahiti.
1858. 22 Vict. c. 24	At St. James', Baldersby (Topcliffe, Yorkshire).
1859. 22 & 23 Vict. c. 64.....	At Lisbon.
1860. 23 & 24 Vict. c. 1	In Chapel of St. Mary in Rydal (Grasmere).
1860. 23 & 24 Vict. c. 86.....	Marriages in Ionian Islands before 6th August, 1860, where one or both parties were British subjects.
1861. 24 & 25 c. 16, ss. 1—4 ..	In certain churches and chapels.
1864. 27 & 28 Vict. c. 77.....	In Ionian Islands before session in 1864.
1865. 28 & 29 Vict. c. 64.....	Colonial marriages validated by Colonial laws.
1865. 28 & 29 Vict. c. 81.....	In chapel of St. James-the-Greater, Eastbury (parish of Lambourne).
1867. 30 & 31 Vict. c. 2	At Odessa.
1867. 30 & 31 Vict. c. 93.....	At Morro Velho.
1868. 31 & 32 Vict. c. 23.....	At Frampton Mansell (parish of Sapperton).
1868. 31 & 32 Vict. c. 113	At St. James-the-Greater, Blakedown (parish of Hagley).
1869. 32 & 33 Vict. c. 30.....	At Parkgate Chapel, Rawmarsh (Yorkshire).
1873. 36 & 37 Vict. c. 1	At Cove Chapel, Tiverton (Devon).
1873. 36 & 37 Vict. c. 20.....	At Stone (Staffordshire).
1873. 36 & 37 Vict. c. 25.....	At Gretton Chapel (Winchcombe).
1873. 36 & 37 Vict. c. 28.....	At St. John's, Eton (Bucks).
1874. 37 & 38 Vict. c. 14.....	At St. Paul's, Pooley Bridge (Barton, Westmoreland).
1876. 39 & 40 Vict. c. i.	At St. James', Buxton (Derbyshire).
1877. 40 Vict. c. lxxii.	At St. Peter's Church, Almondsbury (Gloucester).
1878. 41 & 42 Vict. c. 61	In Fiji.
1879. 42 & 43 Vict. c. 29.....	On his Majesty's ships abroad.
1884. 47 & 48 Vict. c. 1	At district church of Stopsley (Luton, Beds).
1884. 47 & 48 Vict. c. cxii.....	At Congregational Church, Wood Green (Middlesex).

(*o*) Repealed, 55 & 56 Vict. c. 23, s. 26.

(*p*) From the abolition, in 1808, of the British factory in Hamburg until 14th August, 1833, marriages were solemnized by a chaplain appointed by the Bishop of London (or other minister officiating in his place), and such marriages were declared valid if one or both of the parties was a British subject.

(*q*) Passed in consequence of *R. v. Millis*, 10 Cl. & F. 534 (*ante*, p. 25).

MARRIAGES VALIDATION ACTS (UNITED KINGDOM).

Regnal Year, Session and Chapter.	Marriages to which the Acts relate.
1884. 47 & 48 Vict. c. 20.....	By Greek rite in England ^(r) .
1886. 49 & 50 Vict. c. 3	On defect in banns where one party is resident in Scotland ^(s) .
1888. 51 & 52 Vict. c. 28.....	Solemnized by G. F. W. Ellis.
1889. 52 & 53 Vict. c. 38.....	In Basutoland and British Bechuanaland.
1891. May 9. Order in Council.	As to certain marriages in St. Petersburg between 9th May, 1891, and 9th August, 1891. (St. R. & O. 1891, p. 517.)
1892. 55 & 56 Vict. c. 23, s. 26 (2)	Solemnized and registered before a British Consul or other marriage officer in intended pursuance of Acts repealed in 1892.
1895. Oct. 3. Order in Council.	As to marriages solemnized within the limits of the Matabeleland Order in Council, 1894, before 10th January, 1895. (St. R. & O. Revised, ed. 1904, vol. 5, Foreign Jurisdiction, p. 113.)
1897. 62 & 63 Vict. c. xxxiii...	At Farnley Tyas.
1901. 1 Edw. 7, c. 23	(a) Marriages celebrated at the places and between the dates specified in the schedule. (b) Marriages celebrated before 17th October, 1899, at St. Mary, Greenhithe, Kent, in respect of persons resident on board two training ships moored in the Thames off Greenhithe.
1903. 3 Edw. 7, c. 26	Ellerton Chapel of Ease, Brantingham. St. Mark, Marske in Cleveland. All Saints, Bright Waltham. St. Mary, Great Ilford (Essex). Mission Room, Norwich.
1906. 6 Edw. 7, c. xxvi.	Old Baptist Lower Chapel, Grays Thurrook (Essex). Provisional Order Marriages Confirmation Act, 1906 ^(t) . Marriages between 26th February, 1866, and 25th February, 1904, at St. Peter's, Selsey (Sussex), and between 2nd October, 1879, and 24th December, 1904, at St. Nun's Chapel, Grampound (Cornwall).
1906. 6 Edw. 7, c. 30	In British possessions, with deceased wife's sister.
1907. 7 Edw. 7, c. xlvii.	Provisional Order Marriages Confirmation Act, 1907 ^(t) . Marriages at St. John's Chapel, Brownston (Modbury, Devon), between 25th January, 1882, and 1st January, 1906.
1907. 7 Edw. 7, c. 47, s. 1	Marriages already contracted with deceased wife's sister ^(u) .
1908. 8 Edw. 7, c. cxxxix.	Provisional Order Marriages Confirmation Act, 1908. Banns and marriages at Marlston Church, Bucklebury (Berks), before 6th April, 1907; at St. Nun's Chapel, Grampound, between 26th March, 1906, and 13th August, 1906; at the church or chapel of Westhope, Diddlebury (Salop), between 1760 and 1873; and at Capel-y-ffin, in the parish of Lanigon (Brecon), between 19th May, 1845, and 12th September, 1907.
1909. 9 Edw. 7, c. cxxv.	Provisional Order, Confirmation Marriages (No. 1) Act, 1909 ^(t) . Banns and marriages at St. James, New Bradwell, Stantonbury (Bucks), between 6th December, 1860, and 20th May, 1909.
1909. 9 Edw. 7, c. clv.	Provisional Order, Confirmation Marriages (No. 2) Act, 1909. Banns and marriages at Holy Trinity, Calne (Wilts), between 1864 and 1st July, 1909.

^(r) The Act provides for obtaining a judicial declaration of validity.^(s) *Vide ante*, p. 118.^(t) *Vide* 5 Edw. 7, c. 23, *ante*, p. 158.^(u) *Vide ante*, p. 162.

Part IV.—Marriage Laws of British Possessions.

CHANNEL ISLANDS.

(a) GUERNSEY (a).

The marriage law of this island rests in the main on the Canons and Constitutions Ecclesiastical of 1700 (b).

The prohibited degrees are prescribed by Canon 10, which is in the same terms as the Jersey Canon (*post*, p. 240). This Canon also requires that a translation in French of the table of prohibited degrees shall be made and publicly set up in every church (c). The degrees have not been altered by subsequent legislation. Ordinances of 1567 (d) and 1581 (e) declare the marriages of minors (f) to be null if celebrated without the consent of their father and mother, or of their tutors or guardians, and (or) their friends and relatives.

Legitimation *per subsequens matrimonium* appears to be recognised by the customary law of the island (g).

Solemnization.]—By an Ordinance of 1684 (h) the clergy of the island are forbidden to marry an inhabitant to a stranger unless the governor has had notice of the intended marriage.

The general rules as to solemnization or registration are contained in an Ordinance of 14th February, 1840 (i).

That Ordinance preserves the right to marry as heretofore: “dans le Bailliage, dans tout lieu et en tout temps avec licence ou par licence du subrogé special de l'Evêque (de Winchester). Toutes personnes peuvent également être mariées comme auparavant après la publication des bans du mariage: mais toutes personnes peuvent aussi être mariées sans ces licences et sans la publication des dits bans, en produisant le certificat ou la licence du registre.” (Art. 16.)

The Anglican usages are preserved intact as to marriages celebrated by ministers of that church (Art. 16), and the Ordinance does not interfere with the table of prohibited degrees. Where it is proposed to celebrate a marriage without episcopal licence or banns notice is given to the civil registrar. (Arts. 17, 18.) After the necessary conditions are satisfied he may issue his licence in seven days after the notice or his certificate in twenty-one days after the notice. (Arts. 20, 21.)

Non-Anglican marriages may be celebrated at the registrar's office (Art. 26) or in a duly registered non-Anglican place of worship in the presence of the registrar or his deputy. (Arts. 25, 27.)

(a) Including Alderney, Herm, Sark, and Jethou (1 Moore, P. C. 308).

(b) Issued by the Bishop of Winchester. Submitted to and considered by the States which petitioned the King to confirm them with certain amendments (*Actes des États de Guernsey* (1651—1780), ii. p. 66). According to Duncan (*History of Guernsey*), the English Canons of 1603 were adopted in 1662.

(c) *Ibid.* p. 69.

(d) *Recueil d'Ordonnances*, vol. i. 24.

(e) *Ibid.* p. 41.

(f) *I.e.*, persons who have not completed their twentieth year. See Ordinance of 1842, Art. 21; and Form of Licence (C).

(g) *Jeremie, Law of Real Property in Guernsey* (1841), p. 229; Custom of Normandy, Art. 27.

(h) *Recueil d'Ordonnances*, vol. i. 220, referring to an earlier regulation by Royal Commissioners of 1607 on the same subject, recognising the right to intermarry with strangers (ed. 1814, pp. 12, 72).

(i) Approved with amendments by Order in Council of 3rd October, 1840, and registered in Guernsey 24th October, 1840 (*Recueil d'Ordres en Conseil enregistrés en Guernsey*, vol. i. p. 60). It is in substance a French version of the English Acts of 1836, 1837.

(b) JERSEY.

The marriage law of the island rests on ecclesiastical law as modified by Acts of the States. The ecclesiastical law as to marriage rests on the Canons and Constitutions Ecclesiastical for Jersey (*k*).

Impediments.]—By Canon 10 “none shall marry contrary to the degrees prohibited by the Word of God as they are expressed in the table made by the Church of England (*l*), on pain of nullity and censure.” A law of 19th March, 1896 (*m*), validates marriages contracted in the island before promulgation of the law between a man and his deceased wife’s sister, and legalizes the issue of such marriage: subject to the following conditions:—

1. That the parties were domiciled in the island;
2. That the marriage was in other respects lawful;
3. That the proper legal formalities were complied with; and
4. That the marriage had not been annulled.

By sect. 2 of the law such marriages contracted (after the promulgation of the law) between parties domiciled in the island are not invalid nor the issue bastards by the fact of the affinity.

Consents.]—The Jersey canons are silent as to the consents necessary for marriage of a minor.

In the case of a marriage on the registrar’s certificate a person who has not completed his twentieth year needs the consent of his father or, if the father is dead or under interdiction, of the mother or tutor. (Art. 32.) In the case of marriage under licence of the registrar, the same consents are needed as were needed for marriage by licence before 1842. (Art. 33.)

Legitimation *per subsequens matrimonium* appears to be part of the law of the island (*n*).

Solemnization and Registration.]—The celebration and registration of marriages is governed by a law of 1 November, 1841 (*o*).

It deals with marriages—

- (1) by the rules of the Church of England;
- (2) before the civil registrar;
- (3) in buildings not belonging to the Church of England. (Arts. 38 *et seq.*)

1. Art. 25 of the Law of 1841 preserves the rules of the rubric in the Church of England liturgy with reference to marriage; but besides marriage by banns or ecclesiastical licence, permits marriage by a *certificate* of the civil registrar in substitution for banns (Art. 26), and provides for registration by the celebrating minister of the particulars required as to any marriage. (Arts. 27, 28.)

2. The superintendent registrar on receiving the prescribed notices, may issue a licence for celebration of marriage (*a*) in his office (*or*) (*b*) in a registered place of worship not of the Church of England. (Art. 31.) Where the marriage is not to be by the registrar’s licence, he may issue a certificate authorising the marriage. (Art. 32.)

Persons who object to be married in a registered place of worship may be married in the office of the superintendent registrar, and by his certificate or licence, in the presence of the registrar of the parish and two witnesses (*p*).

(*k*) Compiled by order of James I., confirmed by Royal Charter in 1623, and in that year proclaimed in force. They are printed in Falle’s History of Jersey (ed. 1837), p. 245. They continued in force, without any alteration, until 1840. See *Dean of Jersey v. Rector of ———* (1840), 3 Moore, P. C. 232; Burge, Foreign and Colonial Law (ed. 1907), vol. i. p. 132.

(*l*) *Ante*, pp. 14, 15.

(*m*) Approved and ratified, and ordered to be registered by Order in Council, 15th August, 1896 (Recueil des Lois, vol. vi. p. 303).

(*n*) Jeremie, Law of Real Property in Guernsey (1841), p. 229; Custom of Normandy, Art. 27.

(*o*) Registered 9th May, 1842, after approval by Order in Council of 27th April, 1842 (Recueil des Lois, vol. i. p. 288). The law is an adaptation to the island of the English Marriage Acts of 1836 and 1837 (*ante*, pp. 81, 94).

(*p*) Art. 42, a transcript of 6 & 7 Will. 4, c. 85, s. 21 (*ante*, p. 85). As to proof in England of the validity of such marriage, see *Westlake v. Westlake*, (1910) P. 167.

Provision is made for the registration of non-Anglican places of worship for the celebration of marriages, and for the celebration of marriages therein on the licence or certificate of the superintendent registrar and in the presence of the registrar of the (civil) parish, who registers the marriage (*q*).

The forms of licence, &c. contain reference to impediments "*de parenté ou d'alliance*."

ISLE OF MAN (*r*).

Impediments.—The law as to impediments to marriage is the same as in England. It rests on the marriage law of the Church of England as applied to the island by the canons of 1603 (*s*). The only modification of the table of prohibited degrees is that made by an Act of 1908 (*t*), which validates as civil contracts marriages, within or without the island, contracted before or after its passing between a man and his deceased wife's sister (sect. 1).

Consents.—Persons under twenty-one require the same consents to their marriage as in England (1849, s. 10): but the Chancellor of the island can give the consent if it is unreasonably withheld or cannot be got by reason of the insanity or absence of the proper person.

The island legislation does not specifically provide that absence of the prescribed consents shall avoid the marriage.

Marriage hours.—All marriages must be celebrated between 8 a.m. and 4 p.m. (*u*).

Celebration of Anglican marriages.—Marriages may be celebrated according to the rites of the Established Church of the island—

- (a) After publication of banns as prescribed by sects. 2 and 5 of the Act of 1849. Where one of the parties is resident in the United Kingdom it is enough to publish the banns where he is resident, according to the law or custom prevailing in that part of the United Kingdom where he resides (1895, s. 2):
- (b) By ordinary licence of the bishop, vicar-general or surrogate, for the grant whereof at least *fifteen days'* (*x*) residence is required in the parish or district where the marriage is to be solemnized. Three days before issue of the licence the same details must be given as are required in a marriage notice for the celebration of a non-Anglican marriage (*y*): or
- (c) By special licence issued by the Bishop of Sodor and Man to marry at any time or place on the island (1849, s. 12).

Subject to these statutory modifications, the celebration is governed by the English rubric and the English canons of 1603 (*ante*, p. 68).

Non-Anglican marriages.—Non-Anglican marriages are regulated by Acts of 1849, 1885 and 1898.

The Act of 1849 provides for the registration of chapels, &c., for solemnizing marriages.

Notice of marriage in such chapel, &c., must be given in the prescribed form to the registrar of the district. The rules as to consent, &c., are the same as in

(*q*) Art. 38.

(*r*) British legislation does not extend to the island, unless it is specifically named. See Burge, *Colonial Law* (1907), vol. i. p. 129.

(*s*) The bishopric and diocese were "annexed, adjoined, and united" to the Province of York by 33 Hen. 8, c. 31. See Johnson, *Manx Jurisprudence* (1811), pp. 88 *et seq.* The bishopric is now regulated by 7 Will. 4 & 1 Vict. c. 30.

(*t*) The Act is a transcript of 7 Edw. 7, c. 47, omitting only references to the Matrimonial Causes Act, 1857, and the provision that "sister" shall include sister of the half-blood.

(*u*) Act of 1895, s. 4.

(*x*) Altered from thirty days by the Act of 1895, s. 3 (4).

(*y*) One party at least must reside in the place where the marriage is to be solemnized (1895, s. 3).

the case of Anglican marriages, and fifteen days' (z) residence in the district is required. The registrar may issue a certificate after twenty-one days from the entry of the notice or a licence after three days from such entry.

Marriage may be solemnized in a registered place of worship of a Dissenting or Nonconformist body—

- (a) In the presence of the registrar (a); or
- (b) In his absence, by a minister of the church, denomination or religious body of which the building is a place of religious worship (b), or by a minister (c) of another church, denomination or religious body having buildings registered for the solemnization of marriage in pursuance of the Dissenters Marriage Act, 1849 (d).

Register books are supplied to the ministers of registered places of worship, and they are required to register marriages and make quarterly returns (1895, ss. 4—8).

Civil marriages.]—Persons who object to marriage in a place of worship may be married (after notice and certificate) on any weekday at the office and in the presence of the deputy registrar of the district (sect. 4).

Legitimation *per subsequens matrimonium* is recognized (e).

MEDITERRANEAN POSSESSIONS.

CYPRUS.

Cyprus is not, strictly speaking, a British possession, but is occupied and governed by Great Britain subject to the suzerainty of the Sultan of Turkey and to tribute paid to him.

The marriage laws of the island rest partly on the laws of the Ottoman Empire in force in Cyprus on 13th July, 1878 (f), and partly on legislation (g) passed since the island came under British control (h).

The result of the combination of these two systems of law is to make marriage of natives of Cyprus (as in India) dependent on the personal law of the parties based on their creed (i).

The population of Cyprus falls into four classes :—

- (1) Natives of the island there resident who are Ottoman subjects under British authority.
- (2) Ottoman subjects from other parts of the Sultan's dominions who are resident in the island.
- (3) British subjects in the island; and
- (4) Subjects of foreign Powers (other than Turkey) in the island.

Native Christians.]—The law as to the marriage and legitimation applicable to Christian natives of the island depends on the religious community to which they belong (k), and they are governed as to capacity, impediments, &c., by the

(z) 1895, s. 3 (4), altering 1849, s. 6.

(a) 1849, s. 3.

(b) 1885, s. 3.

(c) *I.e.*, any person who shall officiate, teach, or preach, in any body of Dissenters or Nonconformists who is reputed or recognized to be a minister of religion, and follows no secular occupation, except that of schoolmaster (1895, s. 10).

(d) 1908, s. 3.

(e) *Lex Scripta* of Isle of Man (ed. 1819), 70, 75. It is old custom given for law by the Tynwald in 1594.

(f) See Cyprus Courts of Justice Order in Council, 1882, s. 3.

(g) *Ibid.* s. 23.

(h) By a Convention of 4th June, 1878, and a Supplementary Convention of 14th August, 1878 (Hertslet's Treaties, vol. xiv.).

(i) See Journ. Comp. Leg. Society (N. S.), vol. x. p. 127, article by Mr. Anton Bertram, Judge of the Supreme Court of Cyprus.

(k) *Parapano v. Happaz*, (1894) A. C. 165, where the history of Cypriot law is considered. The case determined the legitimacy of a child of a Roman Catholic father who married, according to the Latin rite, a woman belonging to the Greek Church who had obtained from the authorities of that Church a dispensation allowing the marriage.

law of that community (*l*). In the case of persons belonging to the Orthodox Eastern Church in Cyprus (which is autocephalous, *i.e.*, independent of the Patriarch of Constantinople (*m*)), the Archbishop of Cyprus has jurisdiction in matrimonial causes, and the validity of divorces granted by him in such causes is recognized by the civil tribunals.

Claims arising on points involving the law of the Orthodox Church (*n*) are from time to time decided in the civil courts, which decline to take judicial cognizance of the marriage laws of the Church, and require them to be proved as a fact (*o*).

Marriage between persons in the fifth degree of affinity is prohibited by the Orthodox Church (*p*). Under the rules of that Church, marriage between a man's brother and a woman's mother's sister brings such man and such woman within the fifth degree to each other, so that they cannot lawfully intermarry (*q*).

Mohammedans.—In respect of marriage, Mohammedan natives of the island are subject to the rules of the Koran as interpreted in the Ottoman Empire and to Ottoman law in force in Cyprus on 13th July, 1878 (*r*).

By an annex of 1st July, 1878, to the Convention of 4th June, 1878, it is stipulated that a Mussulman religious tribunal shall continue to exist in the island, which shall take exclusive cognizance of religious matters and no others concerning the Mussulman population of the island.

Marriages, where either party is a Mohammedan, are specifically excepted from the Marriage Ordinance No. 2 of 1889.

British Subjects.—The Marriage of British Subjects Ordinance (No. 2 of 1889) (*s*) does not extend to Christian Cypriots. Marriages, where either of the parties is a Mohammedan, are excluded from the Ordinance (sect. 29). Where a British subject wishes to contract marriage in the island, he must give a marriage notice to the marriage officer of the district in which either of the parties has his abode. After the prescribed formalities (including a declaration of no impediment) have been complied with, a certificate is issued by the officer (sects. 2—5, 7). Where either of the parties to the intended marriage is a subject of a foreign government having a consul in Cyprus, the marriage officer must forward to the Cyprus consulate of such government a certified copy of the marriage notice, and if either of the parties is an Ottoman subject, the marriage officer must forward a copy of the notice to the competent ecclesiastical chief of such Ottoman subject (sect. 3). A special licence may be issued by the Governor (sect. 6). The rules as to consent in the case of minors are substantially the same as in England (sects. 8—11).

(*l*) See *Haralambo v. Hadji Michael* (1885), 1 Cyprus L. R. 29. As to the prohibited degrees, which differ from those recognized in England, see Milas, *Eccl. Law of the Orthodox Church*, Athens, 1906.

(*m*) See Cyprus Ordinance No. 8 of 1907.

(*n*) It must be remembered that in the case of persons of the Orthodox Church who are not natives of Cyprus, nor Ottoman subjects, questions may arise as to the jurisdiction of the archbishop, and as to the application of their national legislation, which has in certain States—*e.g.*, Russia, Servia, and Greece—made regulations as to marriage which differ from the ecclesiastical law, as recognized by the Patriarch of Constantinople. See Milas, *Eccl. Law of the Orthodox Church*, Athens, 1906. The application of the national law is preserved by Ordinance No. 2 of 1889 (*post*, p. 244).

(*o*) *Stratoura v. Yakoumi* (1905), 6 Cyprus L. R. 91. This case turned on whether the betrothal (*μνήστεια*) of the defendant to a sister of the plaintiff invalidated a marriage celebrated by a Greek priest between the plaintiff and the defendant; and in the absence of evidence of the fact of the prior betrothal, and of the need of a bishop's licence, the Court held the marriage valid.

(*p*) *Della v. Haji Michaeli* (1902), 6 Cyprus L. R. 23. As a result of this conclusion the Court had to consider whether the children of this union, being born out of wedlock, had any rights of succession to their mother under Ottoman law, and whether that law conflicted with the law of the Greek Church.

(*q*) *Ibid.*

(*r*) The Ottoman common law, based on the Sheri (Mohammedan Sacred Law), as interpreted in the Hanafite tradition and collected in the *Mejele* (1869). See *Journ. Comp. Leg. Soc.* (N. S.), vol. ii. p. 86.

(*s*) Cyprus Statute Law (ed. 1906), p. 269.

After the obtaining of a certificate or special licence, the marriage may be solemnized in the island—

- (1) By any accredited or recognized member of any Christian or Jewish church, denomination or body according to the rites or usages of marriage observed by such church, denomination or body (sect. 12); or
- (2) By a marriage officer at his office (sects. 12, 13).

No marriage celebrated under the ordinance is valid which, if celebrated in the country to which either of the parties to the marriage belongs, would be null and void on the ground of kindred or affinity (sect. 17).

Foreigners.—The effect of the ordinance is to cover the case of marriage between British subjects and between a British subject and a Christian or Jewish subject of the Sultan or of any foreign Power. It does not affect marriages between persons neither of whom is a British subject, and for such marriages no specific provision is made by local legislation.

Legitimation by the subsequent marriage of the parents is recognized by Mohammedan law, and, in the case of Christians, by an island law of 1884 (*t*).

GIBRALTAR.

The law of England as of 31st December, 1883, is in force in Gibraltar, so far as applicable to matters not covered by past or future local ordinances or Order in Council (*u*). From this it results that the law of England as of the above date applies to this Possession as to capacity and impediments. Marriage with a deceased wife's sister was made legal in 1908 (Ord. No. 5).

Ordinance No. 1 of 1861 regulates marriages. It does not apply to or in any way affect marriages which at its passing might lawfully be celebrated in Gibraltar; and it allows such marriages to continue to be solemnized as if it had not passed (sect. 30). All persons may, however, contract marriages under its provisions (sect. 1).

The provisions as to consent to marriage of persons under twenty-one are in substance the same as in England (sects. 4, 5).

Notice must be given to the marriage registrar, who can grant licences or certificates for marriage in a registered building (sects. 1, 7).

The marriage may be solemnized—

- (a) Before the marriage registrar (sect. 15).
- (b) In a registered church or building in the presence of two witnesses besides the officiating minister (sects. 12—14).

Nothing in the ordinance renders a marriage valid if contracted between parties who at the time of such marriage would, by the law of England, be incapable of intermarrying (sect. 31).

Where either party to a marriage to be solemnized in Gibraltar is a subject or citizen of a foreign state, notice of marriage may not be accepted, nor the marriage solemnized, until a certificate is produced from the consular or other representative in Gibraltar of the foreign state that the requirements of the country of the party in regard to the marriage have been met, unless the Governor in his discretion sees fit to dispense with such certificate (Ord. No. 7 of 1902 (12th July, 1902)).

Ord. No. 2 of 1903 provides for the giving of notices to the marriage registrar as to marriages intended to be solemnized under the Foreign Marriage Act, 1892 (*v*), and of the giving of certificates by the registrar, unless he is aware of an impediment or objection.

For notices and certificates in the case of persons seeking to be married to a foreigner in a foreign country, see Ord. No. 7 of 1907.

(*t*) See *Parapano v. Happaz*, *ubi supra*.

(*u*) Order in Council of 2nd February, 1884. See *Jephson v. Riera*, 3 Knapp, P. C. 150; Report of Attorney-General for Gibraltar, 1 Journ. Comp. Leg. Society (O. S.), 144.

(*v*) *Ante*, pp. 119, 126.

MALTA.

The marriage laws of Malta are in the main, if not wholly, those of the Church of Rome, *i.e.*, are regulated by the canon law as interpreted by that Church, including the decree *Tametsi* of the Council of Trent (Cap. 1, sess. 24, *de reformatione matrimonii*).

In 1865 the Advocate-General of Malta (Sir Adrian Dingli) advised (1) that marriages between a Roman Catholic and a non-Roman Catholic could only be legally celebrated by a Roman Catholic priest in accordance with the forms prescribed by the Council of Trent; and (2) that marriages between non-Roman Catholics under licence from the governor or bishops, or otherwise, had by 1865 received a degree of recognition which constituted an inveterate usage, and were valid (*x*).

In 1893 the validity of non-Catholic and mixed marriages in Malta was the subject of a reference to the Privy Council. An Order in Council was made on 13th August, 1895, embodying the report of the committee (*y*), which is as follows:—

“The questions raised in the reference were as follows:—

- “1. Whether the unmixed marriages which have been celebrated in Malta (a) by English clergy, (b) by Presbyterian ministers, (c) by Wesleyan ministers, are valid?
- “2. Whether the mixed marriages which have been celebrated in Malta by ministers other than those of the Roman Catholic Church are valid?
- “3. Whether it is expedient that there should be legislation validating retrospectively all marriages hitherto celebrated in Malta by non-Catholic ministers, and also regulating the mode in which such marriages, whether mixed or unmixed, are to be contracted or celebrated in future, and if so, whether such legislation ought to be by the Imperial Parliament or by the Government Council of Malta?

Upon the information and arguments submitted to them their Lordships answered the first and second of these questions in the affirmative. Their report on the reference was as follows:—

“Their Lordships think it right to add with reference to the first question that whilst unmixed marriages by the clergy of the Church of England appear to them to be fully sanctioned by inveterate usage, the grounds upon which the validity of unmixed marriages by Presbyterian and Wesleyan ministers was maintained, though not so clear, were, in their Lordships’ opinion, sufficient.

“The second question involves many considerations attended with great difficulty. Their Lordships are conscious that, notwithstanding the elaborate character of the argument addressed to them, it is possible that in the event of the question coming before them judicially, additional information and authorities might be produced tending to shake the conclusion which they have derived from the materials before them.

“In reply to the third question their Lordships have only to observe that, in their opinion, where persons have contracted marriage in good faith, and in a mode sanctioned by a British governor, but in such circumstances that the validity of the ceremony may be open to question, it is expedient that the matter should be set at rest by legislative declaration. Their Lordships are not in a position to make any suggestion as to the legislature by which that object ought to be accomplished.”

There has not yet been any Imperial or Colonial legislation dealing with the subject of the report.

Legitimation by subsequent marriage of the parents is recognized, and has been allowed even when the child was an adulterine bastard (*z*).

(*x*) See Sir A. Dingli’s treatise (1893) in support of these propositions.

(*y*) Parl. Pap. 1896, c. 7982.

(*z*) *Gera v. Ciantar* (1887), 12 App. Cas. 557, where the authorities and practice are fully discussed.

NORTH AMERICAN POSSESSIONS.

CANADA.

1. DOMINION.

Under the British North America Act, 1867 (30 & 31 Vict. c. 3), s. 91 (26), the legislative authority of the Parliament of Canada extends to marriage and divorce, and the concluding words of the section appear to exclude from the authority of provincial legislatures private Acts relating to marriage or divorce.

The grant of this power does not invalidate prior legislation on those subjects in a province of the Dominion, nor alter the law of marriage or divorce as it stood at the commencement of the Act, but merely vests in the Dominion Legislature authority to make or alter the law on these subjects.

The Dominion Parliament has legislated on the subject of bigamy (*a*), and has altered the prohibited degrees of consanguinity and affinity by legalising marriage between a man and his deceased wife's sister (*b*), and with his deceased wife's sister's daughter (*c*), as if no law against such marriage had ever existed.

The provincial legislatures have, under sect. 92 (12) of the British North America Act, 1867, exclusive powers of legislation as to the solemnization of marriage in their respective provinces.

Sect. 101 of the Act, 1867, is construed as empowering the Dominion Legislature to set up a Court for divorce and matrimonial causes (*d*), but this power has not been exercised, and there is no general legislation as to divorce; but the power to pass special Divorce Acts is reserved to the Dominion Legislature (*e*); and in British Columbia (and perhaps in Manitoba and the North-West Territories) the English divorce statutes are applicable (*vide infra*).

2. PROVINCES.

(a) BRITISH COLUMBIA.

This province is subject to the civil laws of England as of 19th November, 1858, so far as not rendered inapplicable by local circumstances (*f*) and as not repealed, varied, &c. by federal or provincial legislation. This had the effect of applying to the province the general law of England as to capacity for marriage, as to the prohibited degrees (subject to the change stated *supra*), and as to divorce (*g*).

Subject to the provisions of the Marriage Act (Rev. Stat. 1897, c. 129, not since amended), "in all matters relating to the mode of celebrating marriages or the validity thereof, and the qualification of parties about to marry, and the consent of parents or guardians, or any person whose consent is necessary to the validity of such marriage, the law of England shall prevail" (*h*).

(a) Criminal Code; Rev. Stat. Can. (ed. 1906), c. 146, s. 307; *Re Bigamy Laws of Canada* (1897), 27 Canada S. C. 461.

(b) (1882) 45 Vict. c. 42, s. 1, re-enacted in Rev. Stat. Can. (1906), c. 105, p. 1783.

(c) (1890) 53 Vict. c. 36, s. 1, re-enacted in Rev. Stat. Can. (1906), c. 105.

(d) Todd, *Parliamentary Government in the Colonies* (2nd ed.), 595.

(e) The editors have not been able to trace any examples of such Acts. 42 Vict. c. 79 (Canada) is a special judicial separation Act. And see Todd, *Parliamentary Government in the Colonies* (2nd ed.), 595 (m).

(f) Proclamation of 19th November, 1858. English Law Act (Rev. Stat. Brit. Col. c. 115, s. 2).

(g) *Watts v. Watts*, (1908) A. C. 573.

(h) Rev. Stat. (1897), c. 129, s. 24.

The Marriage Act provides for marriage—

- (1) by licence under the hand and seal of the Lieutenant-Governor or his lawful deputy (*i*);
- (2) after banns openly and audibly published on three consecutive Sundays or (if the practice or faith of the denomination requires it) Saturdays (*k*);
- (3) after notice to and certificate by the civil registrar (*l*).

The marriage must be celebrated within three months after publication of banns or issue of the licence or certificate (*m*).

The marriage, whether civil or religious, must be celebrated in the presence of two or more credible witnesses besides the officiant, and in a public manner and with open doors (save where otherwise permitted by licence) (*n*).

The persons who may celebrate marriage are—

- (1) members of every church and religious denomination in the province, including adult male commissioners or staff officers of the Salvation Army; and
- (2) marriage registrars appointed under the Act, before whom no religious ceremony may be used (*o*).

Special provision is made as to Jews and Quakers (*p*).

(b) MANITOBA.

This province is subject to the law of England as of 15th July, 1870, as altered by subsequent legislation of the Dominion and the province (*q*).

The solemnization of marriage is regulated by the Marriage Act, 1906 (5 & 6 Edw. 7, c. 41).

Marriage may be solemnized between persons not under legal disqualification to contract marriage

- (1) by ministers and clergymen of every church and religious denomination duly ordained or appointed according to the rites and ceremonies of the church, &c. to which they belong;
- (2) by ministers, evangelists, or missionaries for the time being employed by any congregation or missionary society of the religious people commonly known congregationally as churches of God or "of Christ," and individually as "Disciples of Christ," or by any elder of any such congregation who from time to time is chosen by the congregation to solemnize marriage; or
- (3) by duly appointed commissioners or staff officers of the Salvation Army (*r*).

There are special provisions as to the marriage of Jews (sect. 3) and of Quakers (sect. 4) (*s*), but no provision is made for civil marriage.

No marriage may be celebrated except by licence (under the hand of the Minister of Agriculture), or after due publication of banns.

Banns must be published once openly on a Sunday, immediately before, or after, or during the service, in a church or meeting-house, where one of the parties has been in the habit of attending, or of the religious body to which the celebrant member belongs. Provision is made for cases in which the parties reside in different districts. A certificate of due publication of banns must be given if required. A dispensation from proclaiming the banns may be given by the head of the church to which one of the parties belongs, and has the effect of a marriage licence, and is subject to the same fee.

(*i*) *Ibid.* sects. 2, 3.

(*k*) *Ibid.* sect. 5.

(*l*) *Ibid.* sects. 7, 8.

(*m*) *Ibid.* sect. 22.

(*n*) *Ibid.* sects. 9, 10, 11.

(*o*) *Ibid.* sects. 7, 9, 10.

(*p*) *Ibid.* sect. 12.

(*q*) It has not been judicially determined whether this makes divorce possible.

(*r*) Sect. 2. Certain marriages prior to 1st June, 1906, celebrated irregularly in the province are validated by sects. 28, 32.

(*s*) Certain Quaker marriages are validated by sect. 29.

The licences are sent out from the ministry of agriculture to issuers of licences, who issue them on application and on filing the prescribed affidavit. The prohibited degrees of consanguinity and affinity are printed on the back of the affidavit, in the same manner as in Ontario (*vide post*, p. 253).

In the case of persons under eighteen not being *sui juris*, the written consent of parent or guardian is required before issue of a licence. Provision is made for dispensing with the consent if the parents are dead and there is no guardian, or if the applicant has resided twelve months in the province, and the parents though living are not in the province or not resident there (*t*).

No licence to marry may be issued to a person under sixteen, except a medical certificate (or affidavit of the parents of the applicant) that marriage is necessary to prevent the illegitimacy of offspring; and, except under licence so issued, it is illegal to celebrate a marriage ceremony if the official knows, or is informed, that either party is under sixteen (*u*).

It is also punishable for a minister, &c. to solemnize a marriage if he knows or believes either party to be an idiot or insane (*x*).

The Act contains a provision validating, as regards civil rights in the province, marriages irregularly celebrated, if the parties have cohabited as man and wife. The validation accrues—(1) at the end of two years from the ceremony; or (2) on the death of either party within the two years; but is conditional on there having been no legal disqualification to marry, and on neither party having lawfully married within the period of limitation (*y*).

Registration.]—The registration of marriages is governed by the Vital Statistics Act (Rev. Stat. Manitoba (ed. 1902), c. 173). By sect. 18 persons authorized by law to celebrate marriages must report each marriage celebrated by them in a form prescribed to the municipal clerk of the municipality within which the marriage was celebrated.

(c) NEW BRUNSWICK.

The marriage laws of the colony rest on the common law of England (as in Nova Scotia, from which it was separated in 1784), subject to the changes made by Dominion and provincial Acts. The provincial marriage Acts contain no table of prohibited degrees, so the English table (*ante*, p. 14) applies as modified by the Dominion laws (*ante*, p. 246). But there is jurisdiction to dissolve or annul marriage (*z*) on the grounds of frigidity or impotence, adultery, and consanguinity within the degrees prohibited by 32 Hen. 8, c. 38 (*z*).

Consent.]—It is an offence knowingly to celebrate the marriage of a person under eighteen without the consent of his parent or guardian (*a*).

Solemnization.]—The legislation of the province as to the solemnization of marriage is contained in Title XVIII. c. 76, of the Consolidated Statutes of 1903. No marriage may be solemnized, nor may any ceremony purporting to be a solemnization of marriage be performed, except by a person registered as authorised to solemnize marriage (*b*). The registration of such person is made by the provincial secretary on application to him in a prescribed form made by the applicant, or on his behalf by the ecclesiastical authority of the denomination of Christians to which he belongs (*c*). Before allowing registration the secretary must be satisfied that the person to be registered—

(1) is a Christian minister or teacher duly ordained according to the rites and ceremonies of the denomination to which he belongs, or by the

(*t*) Sect. 15.

(*u*) Sect. 16 (1).

(*x*) Sect. 16 (2).

(*y*) Sect. 30.

(*z*) Cons. Stats. (1903), c. 115, s. 39 whereof declares in force a New Brunswick Act (31 Geo. 3, c. 5, ss. 9, 10). "Affinity" is not specifically mentioned.

(*a*) (1903), c. 76, s. 9.

(*b*) Sect. 6.

(*c*) Sect. 1.

denomination recognised as a duly ordained minister or teacher by virtue of any prior ordination, and has charge of a congregation in the province, or is connected therewith; or

- (2) is a commissioner or staff officer of the Salvation Army resident in the province, and has charge of a division or branch of the Army in the province; or
- (3) is a Christian minister or teacher resident in the province duly ordained, &c. (*ut supra*), who has had charge of a congregation in the province, but is superannuated or on the supernumerary list, or is a retired minister of good standing in his denomination; or
- (4) is a Jewish rabbi duly ordained according to the rites and ceremonies of the Jewish Church, and having charge of a congregation in the province (*d*).

The registration may be annulled and the authority to marry revoked by the Lieutenant-Governor if a person loses his qualifications (*e*). Notice of such action is gazetted (*f*). A register is kept showing the date of grant or annulment of registration (*g*).

No marriage may be solemnized except after publication of banns or grant of a marriage licence (*h*). Banns must be published in the parish where either of the parties resides in a church or place of religious worship during Divine service, by proclaiming them according to the usage of the denomination of Christians in which it is proposed to solemnize the marriage (*i*).

Marriage licences issue from the office of the provincial secretary under the hand and seal of the Lieutenant-Governor (*k*). They may be issued direct to the parties to the intended marriage (*l*) or in blank to persons not being ministers of religion appointed in each county by the Lieutenant-Governor in Council (*m*). These persons issue licences and take the necessary bonds under regulations prescribed by the Governor in Council (*n*), but may not take fees until they have delivered the licence (*o*).

The marriage must be solemnized in the presence of two or more credible witnesses besides the officiant, and immediately thereafter a certificate of marriage must be drawn up in a prescribed form and transmitted by the officiant to the registrar of the division in which the marriage was solemnized (*p*).

The Act also contains clauses validating certain marriages already celebrated in the province, legitimising the issue, and establishing the rights of persons claiming under such issue (*q*).

(d) (i) NORTH-WEST TERRITORIES AND PROVINCES (*r*).

The North-West Territories at present comprise the territories formerly known as Rupert's Land and the North-West Territory, except such portions of those areas as have been included in Manitoba (*ante*, p. 247): Alberta, or Saskatchewan, or in the districts of Keewatin and Yukon (*s*). The

(*d*) Sect. 2.

(*e*) Sect. 4.

(*f*) Sect. 5.

(*g*) Sect. 3.

(*h*) Sect. 7.

(*i*) Sect. 8. No number of publications is prescribed, nor is there any prescribed form of notice of banns.

(*k*) Sect. 11; and see sect. 18.

(*l*) Sect. 11.

(*m*) Sect. 12.

(*n*) *Ibid.*

(*o*) Sect. 13.

(*p*) Sect. 10. Persons authorised to solemnize marriages are also required to make returns to the registrar (Cons. Stat. c. 54, s. 11).

(*q*) Sects. 15—17. There are numerous Validation Acts—*e.g.*, 1903, cc. 8, 47; 1906, c. 23; 1907, cc. 3, 16; 1908, c. 9; and 1910, c. 13.

(*r*) These were originally part of the territories of the Hudson's Bay Company.

(*s*) 4 & 5 Edw. 7, c. 27 (Dominion), s. 3.

effect of Dominion legislation has been to limit the area of the North-West Territories to the districts of Franklin, Mackenzie and Ungava.

By the North-West Territories Act (*t*), subject to the provisions of the Act, the laws of England relative to civil and criminal matters as the same existed on 15th July, 1870 (*u*), are in force in the North-West Territories in so far as such laws are applicable to the territories and in so far as they have not been or are not hereafter, as regards the territories, repealed, altered, varied or modified by any Act of the Parliament of the United Kingdom or of the parliament of Canada or by any ordinance of the territories.

As to prohibited degrees, the Dominion Act (*ante*, p. 246) alters the law of England.

The legislation of the territories on the subject of marriage is contained in the Consolidated Ordinance of 1898, chap. 46, as amended in 1901 and 1903. These ordinances are printed in the General Ordinances of the North-West Territories, published in 1905.

Impediments.]—The ordinances do not alter the English or Canadian law as to impediments to marriage, and follow the general tenor of English law as to consent to marriage of minors, but provides that on application for a marriage licence for a female over eighteen and under twenty-one the consent of parent or guardian may be dispensed with on evidence by affidavit that the woman is living apart from her parents and guardians and is earning her own living (*x*).

Celebration.]—Under the ordinances the marriage may be celebrated between any two persons not under disqualification or disability to contract such marriage—

- (a) By the members of every church or religious denomination duly ordained or appointed according to the rites and ceremonies of the churches, &c., to which they belong;
- (b) By commissioners and staff officers of the Salvation Army; and
- (c) By marriage commissioners appointed for the purpose by the Lieutenant-Governor in Council.

A marriage may not be solemnized unless a marriage licence is produced to the "marriage commissioner," or the banns have been published *at least thrice* openly on *two* successive Sundays in some public religious assembly (*y*).

A marriage must be solemnized in the presence of two or more credible witnesses besides the clergyman, &c., and the marriage must be registered (*z*).

Marriage licences in a prescribed form are supplied to issuers of marriage licences selected by the Lieutenant-Governor in Council. The form of licence is prescribed, and it may not be issued to a party seeking to marry until he has filed an affidavit in a prescribed form made personally before the issuing officer or a justice of the peace (1898, c. 46, ss. 6—9). The issuing officer is authorised to require further evidence if not satisfied with the affidavit (sect. 10).

The ordinance of 1901 (c. 17) provides for the procedure to be adopted when the parties object to or do not desire marriage by a clergyman or minister of any religious denomination. In such case a notice in lieu of banns is published in the marriage commissioner's office. It also provides for notice in lieu of banns in the case of Quakers and Doukhoborts, and for transmitting a declaration of the fact of marriage according to the rites or ceremonies of these bodies (*a*).

The registration of marriages is dealt with as a branch of vital statistics (*b*).

(*t*) Rev. Stat. Canada, 1906, c. 62, re-enacting 1886, c. 25 (Canada).

(*u*) The Hudson's Bay Charter dates from 1670.

(*x*) 1903, sess. 1, c. 11, s. 1.

(*y*) 1898, c. 46, s. 3; 1901, c. 17, s. 17, sub-s. 1.

(*z*) 1898, c. 46, s. 4.

(*a*) *Ibid.* sect. 5. Sect. 6 contains a general validation as regards civil rights in the North-West Territories of past irregular marriages between persons not legally incompetent to contract, who have subsequently lived together as husband and wife.

(*b*) Cons. Ord. 1898, c. 14. Under sect. 11 any person authorised by law to celebrate marriages must within one month of the celebration of a marriage by him make a return thereof in the prescribed form to the registrar of the division in which the marriage was celebrated.

(d) (ii) ALBERTA.

The marriage laws of this province are those of the North-West Territories as of 1st September, 1905 (c), except as to registration, which is governed by the Vital Statistics Act, 1907, c. 13, ss. 11, 12, 17, as amended in 1908, c. 20, s. 23, which provides for returns by persons authorised to celebrate marriages.

The executive bodies of every religious denomination must send to the Vital Statistics Department at least once in every six months a list of the persons in the denomination who to their knowledge are authorised to perform or who do perform the marriage ceremony (1908, c. 20, s. 23 (4), repealing and re-enacting 1907, c. 13, s. 13).

(d) (iii) SASKATCHEWAN (d).

The Consolidated Marriage Ordinance of 1898 (*ante*, p. 250), has been amended as to this province—

(1) as to payments by issuers of marriage licences to the provincial secretary of two dollars for licence issued to him and receipt by him of three dollars for each licence issued by him (e);

(2) as to publication and certificates of banns.

The banns must be published *at least once on each of two Sundays in some public religious assembly* (f), and the person publishing the banns is required to furnish to either party a certificate of due publication in a prescribed form for a fee of fifty cents (g).

(d) (iv) YUKON.

The Yukon district was separated from the North-West Territories in 1898 (61 & 62 Vict. c. 6, "Dominion"), and was constituted a separate territory. Powers of legislation were given to the commissioner of the territory in council subject to the Act of 1898. The laws relating to civil and criminal matters, and the ordinances as the same existed in the North-West Territories at the time of the passing of the Act (13th June, 1898), remain in force in the territory in so far as applicable thereto until repealed by Federal legislation or ordinance of the Governor-General of Canada in Council or of the commissioner of the territory. These provisions had the effect of applying to the territory the marriage laws of the North-West Territories (*ante*, p. 250). But there appears to be a territorial ordinance of 1902 on the subject which is not accessible to the authors.

(e) NOVA SCOTIA.

This province, acquired by conquest in 1713, has been treated as a planted colony, subject to the common law of England.

Subject to the Dominion Act (*ante*, p. 246), the degrees of consanguinity and affinity, and the general rules of capacity and consent are those of the English law. But Lord Lyndhurst's Act (*ante*, p. 81) does not apply to this province.

(c) The date of its severance from these territories and its establishment as a province : 4 & 5 Edw. 7, c. 3 (Dominion).

(d) Separated from the North-West Territories and established as a province of Canada on 1st September, 1905, by 4 & 5 Edw. 7, c. 42 (Dominion). Sect. 16 of that Act preserves, with certain qualifications, the law of the territory as it stood when the province was established, subject to alterations by the Federal or provincial legislatures. This province includes most of the provisional districts of the North-West Territories, formerly described as Assiniboia, Athabasca, and Saskatchewan.

(e) 1906, c. 27.

(f) 1908, c. 22, s. 1 (2).

(g) *Ibid.* s. 1 (1).

The solemnization of marriage is governed by an Act of 1899 (*h*). It makes no provision for purely civil marriage. The only persons who may solemnize marriage are—

- (1) Ministers or clergymen of a church or religious denomination, being men and resident in Canada, and recognised as duly ordained according to the rites and ceremonies of the church or denomination to which they belong (*i*).
- (2) *Male* commissioners or staff officers of the Salvation Army who have filed with the provincial secretary a copy of their commissions, verified by affidavit, and have received a certificate from the secretary certifying that the person named therein is so commissioned (*k*).

No marriage may be solemnized unless the banns have been published or a licence has been obtained (*k*).

Banns are published in any church or meeting house for Divine worship at the place in which one of the parties resides by the officiating minister audibly during Divine service.

Two publications of banns on two successive Sundays are required, unless more than one service is held in the church on a Sunday, in which case three publications on two successive Sundays are necessary.

The minister is bound to publish the banns on request, unless the intended marriage would be illegal, or inconsistent with the rules and discipline of the church, &c. to which he belongs (*l*).

Marriage licences are granted by deputy issuers of marriage licences appointed by the Lieutenant-Governor on application, supported by affidavit, describing the parties and their ages, and swearing that there is no impediment (*m*). In the case of persons under twenty-one and not *sui juris*, the consent of parent or guardian must be obtained before the issue of the licence (*n*).

No provision is made as to the place or hour of celebration, but the marriage must be solemnized in the presence of at least two witnesses, and after solemnization the minister must give a marriage certificate in the case of marriage by banns, and in the case of marriage by licence fill in the blanks in the certificate endorsed on the licence (*o*), and must make a return of the marriage registered to the prescribed officer within ten days of the marriage (*p*).

A special penalty is provided for sending to a newspaper for publication a false statement of the marriage of any person (*q*).

The Act contains a general provision validating certain forms of irregular marriage contracted before 19th April, 1884 (*r*).

(f) ONTARIO.

The law of this province is based on the English common law as of 15th October, 1791 (*s*).

Lord Hardwicke's Act was never in force in the province (*t*), nor was Lord Lyndhurst's Act, so that marriage within the prohibited degrees (*e.g.*, with a

(*h*) C. 26. Consolidated Statutes of Nova Scotia (ed. 1900), tit. xvii., Of the Domestic Relations, c. 111, vol. ii. p. 220.

(*i*) Sect. 3. Cf. s. 12.

(*k*) Sect. 5. Salvation Army marriages must be by licence (sect. 12).

(*l*) Sects. 6 (2), 25.

(*m*) Sect. 6.

(*n*) Sect. 11.

(*o*) Sect. 14.

(*p*) Sects. 15, 29.

(*q*) Sect. 32.

(*r*) Sect. 34.

(*s*) See 2 Journ. Comp. Leg. Soc. (O. S.), p. 265.

(*t*) See 26 Geo. 3, c. 33, s. 18; *R. v. Roblin*, 21 Upp. Can. Q. B. 352; *Lawless v. Chamberlain*, 18 Ont. Rep. 296, Boyd, C.

deceased wife's sister) was civilly valid unless annulled during the life of the parties (*u*).

The prohibited degrees are as in England (subject to the alteration stated *ante*, p. 246), and are set out in detail in an Act of 1902 (2 Edw. 7, c. 23, s. 1), which declares that the relationships in the table include the half blood as well as the whole blood, and apply to illegitimate as well as to legitimate relations. The table is printed on the affidavits used to found applications for licences.

The solemnization and registration of marriages within the province is governed by provincial legislation. The principal Act is c. 162 of the Revised Statutes (ed. 1897, p. 1609).

The persons authorised to solemnize marriage are men resident in Ontario who are—

1. Ministers and clergymen of every church and religious denomination duly ordained or appointed according to the rites and ceremonies of the churches and denominations to which they respectively belong (*x*).
2. Elders, evangelists, or missionaries of any church or congregation of the religious people commonly called or congregationally known as congregations of God or of Christ, and individually any disciples of Christ, who are from time to time chosen by any such congregation for the solemnization of marriage.
3. Duly appointed commissioners or staff officers of the Salvation Army chosen or commissioned by that Society to solemnize marriage.
4. Recognised evangelists, teachers, or elders of the Brethren (6 Edw. 7, c. 19, s. 27).
5. Elders of the Faringdon Church (4 Edw. 7, c. 10, ss. 39 and 40).

Special provisions are made as to marriages according to the usages and customs of the Society of Friends (1897, c. 162, s. 3).

No provision is made for purely civil marriage.

To warrant the solemnization of marriage there must be produced—

- (1.) A licence of the Lieutenant-Governor or his deputy; or
- (2.) A certificate in lieu of licence, or a form coming from the office of the Provincial Secretary, but issued by persons who occupy the position of civil surrogates.
- (3.) A certificate of due proclamation of intention to marry (banns), which must be made on one Sunday in the church, &c. which one of the parties has been in the habit of attending, or of the community to which the officiating minister belongs, in the district where one of the parties has been resident. Provision is made for proclamation in cases where one party resides in another district of Canada.

No licence or certificate for marriage may be issued to a person under fourteen, nor a marriage of a person under fourteen be solemnized, except on a medical certificate that a marriage is necessary to prevent the illegitimacy of offspring (1897, c. 162, s. 16 (1)).

A person who solemnizes a marriage knowing or believing either party to be an idiot or insane is liable to penalties (*Ibid.* s. 16 (2)).

The general rules as to capacity and consent are as in England (*y*), and in the case of persons under eighteen (who are not emancipated by prior marriage) the consent of parents or guardians is necessary (*Ibid.* ss. 15, 16), and the marriage may be annulled for want of such consent, where the party suing is under nineteen and the marriage has not been consummated (1907, 7 Edw. 7, c. 23, s. 8).

Acts have been passed validating marriages theretofore solemnized by ministers not resident in the province (1897, c. 162, s. 28; 1899, c. 11, s. 17),

(*u*) *Lawson v. Powers*, 6 Ont. Rep. 685, Boyd, C.; *Hodgins v. McNeil*, 9 Upp. Can. Ch. 305.

(*x*) It would seem that this is not limited to Christian bodies: *R. v. Duckout* (1893), 24 Ont. Rep. 250, Armour, C. J. But the church must have its own rules or ceremonies for ordination (*R. v. Brown* (1908), 14 Canada Cr. Cas. 87, where the history of the Act is given, p. 95).

(*y*) Where one party is blind drunk at the time of marriage the marriage is voidable only, and may be ratified by the party when he becomes sober: *Roblin v. Roblin*, 28 Upp. Can. Ch. 439.

and certain marriages celebrated before 1st January, 1890, in North-West Ontario under the forms prescribed by the law of Manitoba (1908, c. 33, s. 40).

The hours for marriage are from 10 a.m. to 6 p.m. (1897, c. 162, s. 5 (2)).

No place for the ceremony is prescribed (*yy*).

Two adult witnesses at least must be present at the solemnization and must sign the register (*z*) as witnesses (1897, c. 162, s. 5 (3)). The certificate or licence to marry, or certificate of banns, must be produced to the officiating minister (*ibid.* sect. 5 (5)), and he must endorse the date of the marriage on the certificate and forward it to the Registrar-General (1905, c. 13, s. 15).

A person who solemnizes a marriage must within thirty days of celebration report the marriage in the prescribed form to the divisional registrar (1908, c. 28, s. 21).

The nature of marriages according to the customs of the North American Indians has been considered, but it has not been decided how far such marriages are valid by Canadian law (*a*).

Legitimation *per subsequens matrimonium* is not recognised (*b*).

No Court in the province has power to grant decrees of divorce or judicial separation (*c*).

(g) PRINCE EDWARD ISLAND.

This province was originally part of Nova Scotia, from which it was separated in 1770. The marriage laws depend on the common law of England, as modified by Dominion and Provincial legislation. Lord Lyndhurst's Act does not apply. The prohibited degrees are those established under 32 Hen. 8, c. 38 (*ante*, p. 63) (*d*), as altered by the Dominion Legislature (*ante*, p. 246).

The principal Marriage Act of the province is of 1832 (2 Will. 4, c. 14). It gives authority to every clergyman or minister of any sect or congregation of Christians having spiritual charge of a congregation within the province, to celebrate marriage either by licence from the Lieutenant-Governor or after publication of banns in his church, &c. A certificate from the Lieutenant-Governor or a person authorised by him in that behalf is necessary to complete the minister's title to celebrate marriage unless he is a clergyman regularly ordained according to the rites of the Church of England, Kirk of Scotland, or Church of Rome, Presbyterians being dissenters from the Church of Scotland, Wesleyan Methodists, or Baptists, and having within the province spiritual charge of a congregation (sect. 2).

Since 1868 (31 Vict. c. 10, s. 1) clergymen or members of the Bible Christians on giving satisfactory proof of appointment, ordination, or constitution, and receiving a certificate from the Lieutenant-Governor, have been authorised to solemnize marriage by licence, or after publication of banns, in their church, chapel, &c. There is a saving allowing regularly appointed ministers of the church having spiritual charge of a congregation to celebrate marriage according to the forms of the sect, without having a certificate (*e*).

An Act of 1903 (3 Edw. 7, c. 7) extends the power to perform the rite of marriage according to the laws of the ecclesiastical organization to which they belong without having obtained a certificate under 2 Will. 4, c. 14, s. 2—

(a) District officers (being males) having charge of a district or branch of the Salvation Army within the province; and

(b) Duly ordained ministers of the Christian Church having spiritual charge of a congregation within the province (*f*).

(*yy*) The marriage need not be in church: *R. v. Secker*, 14 Upp. Can. Q. B. 604.

(*z*) Registers are provided, and the officiating minister must register the marriages therein (1897, c. 162, sects. 24—27).

(a) *Robb v. Robb* (1891), 20 Ont. Rep. 591, Robertson, J.; and see *Connolly v. Woolrich*, 11 Lr. Can. Jur. 197.

(b) Rev. Stat. Ont. 1897, c. 340, s. 1, referring to the Statute of Merton (20 Hen. 3, c. 3).

(c) As to the conditions of recognising a foreign divorce in Ontario, see *Guest v. Guest*, 3 Ont. Rep. 344; *Magurn v. Magurn*, 11 Ont. App. 178.

(d) See 2 Will. 4, c. 14, s. 2, and 31 Vict. c. 10, s. 2.

(e) Sect. 2 validates prior marriages in the sect.

(f) The Act also validates marriages already solemnized before persons falling within classes (a) and (b) (sect. 2).

A single publication of banns during divine service on a Sunday in the proper place of worship is now sufficient (*g*).

Licences under the Act of 1832 were granted by the Lieutenant-Governor (2 Will. 4, c. 4, s. 2). By an Act of 1843 (6 Vict. c. 8) it was provided that no licence should be issued without a bond for 100l., conditioned to be void if there be no lawful impediment to the marriage (sect. 2), and in the case of minors not *sui juris* without evidence of consent by parent or guardian (sect. 1). Power was given to certain deputy prothonotaries in counties of the island to issue licences (sect. 3).

The Acts do not contain any direct authority to justices of the peace to celebrate marriage, but validate certain marriages before justices, and appear to contemplate that marriage may be lawfully celebrated by licence before a justice of the peace (if the licence is directed to him) according to the form of the Common Prayer Book (*h*).

The marriage of persons under twenty-one is void if celebrated without the consent of parents or guardians if they are living and resident in the island, and the celebration of such marriage is punishable (sect. 3 (*i*)).

A marriage must be solemnized in the presence of two or more credible witnesses besides the minister, clergyman, justice of the peace, or other person authorised to solemnize matrimony (sect. 4).

By Acts of 1830 (11 Geo. 4, c. 5), 1832 (2 Will. 4, c. 14, s. 4) and 1891 (55 Vict. c. 7, s. 5), all persons authorised to celebrate marriage contracts (whether by banns or licence) are required within six months of the marriage to send to the island surrogate a certificate of celebration. The Act of 1891 also fixes the fees for licences and for registering certificates of marriage (sects. 3, 4).

(h) QUEBEC.

In this province the law of marriage rests, in the main, on the Civil Code of the province, but where that is silent on the *Coûtume de Paris* (*k*).

The Code does not appear to recognise marriage *in extremis* (*l*).

The following are the provisions of the Civil Code :—

Title Second. Of Acts of Civil Status.

57. Before solemnizing a marriage, the officer who is to perform the ceremony must be furnished with a certificate establishing that publication of banns required by law has been duly made; unless he has published them himself, in which case such certificate is not necessary.

58. This certificate, which is signed by the person who published the banns, mentions, as also do the banns themselves, the names, surnames, qualities, or occupations and domiciles of the parties to be married, and whether they are of age or minors; the names, surnames, occupations and domiciles of their fathers and mothers; or the name of the former husband or wife. And mention is made of this certificate in the act of marriage (*m*).

59. The marriage may, however, be performed without this certificate, if the parties have obtained and produce a dispensation or licence from a competent authority, authorising the omission of the publication of banns.

59A. In so far as regards the solemnization of marriage by ministers of any religious denomination other than the Roman Catholic religion, marriage licences are issued by the department of the provincial treasurer, under the hand and

(*g*) 6 Edw. 7, c. 7, ss. 1, 2, amending 2 Will. 4, c. 14, s. 2, and validating certain marriages solemnized after a single publication.

(*h*) See 6 Vict. c. 8, Schedule; 2 Will. 4, c. 14, ss. 4, 6; and 3 Edw. 7, c. 7, s. 3.

(*i*) Provision is made for dealing with the case of minors whose parents are deceased or absent, and who have no guardian (sect. 7).

(*k*) See Burge, *Colonial and Foreign Law* (ed. 1907), vol. i. p. 229.

(*l*) See *Scott v. Paquet*, L. R. 1 P. C. 522.

(*m*) See Art. 130, *post*, p. 257.

seal of the Lieutenant-Governor, who for the purpose thereof is the competent authority under the preceding article.

The minister who has performed any marriage ceremony under the authority of any such licence, is not subject to any action or liability for damages or otherwise, by reason of there being any legal impediment to the marriage, unless at the time when he performed such ceremony he was aware of the existence of such impediment (*n*).

60. If the marriage is not solemnized within one year from the last of the publications required, they are no longer sufficient and must be renewed.

61. In the case of an opposition the disallowance thereof must be obtained, and be notified to the officer charged with the solemnization of the marriage.

62. If, however, the opposition be founded on a simple promise of marriage it is of no effect, and the marriage is proceeded with as if no opposition is made.

63. The marriage is solemnized at the place of the domicile of one or other of the parties. If solemnized elsewhere, the person officiating is obliged to verify and ascertain the identity of the parties. For the purpose of marriage a domicile is established by a residence of six months in the same place.

64. The act is signed by the officer who solemnizes the marriage, by the parties, and by at least two witnesses, related or not, who have been present at the ceremony, and if any of them cannot sign their declaration to that effect is noted.

65. In this act are set forth—

- (1) The day on which the marriage was solemnized;
- (2) The names, surnames, quality or occupation and domicile of the parties married, the names of the father and mother of each, or the name of the former husband or wife;
- (3) Whether the parties are of age or minors;
- (4) Whether they were married after publication of banns or with a dispensation or licence;
- (4) Whether it was with the consent of their father, mother, tutor or curator, or with the advice of a family council, when such consent or advice is required;
- (6) The names of the witnesses and whether they are related or allied to the parties, and if so, on what side and in what degree;
- (7) That there has been no opposition, or that any opposition made has been disallowed.

Title Fifth. Of Marriage.

CHAPTER FIRST.

Of the Qualities and Conditions necessary for contracting Marriage.

115. A man cannot contract marriage before the full age of fourteen years, nor a woman before the full age of twelve years.

116. There is no marriage when there is no consent (*o*).

117. Impotency (*p*), natural or accidental, existing at the time of the marriage, renders it null (*q*); but only if such impotency be apparent and manifest. This nullity cannot be invoked by any one but the party who has contracted with the impotent person, nor at any time after three years from the marriage.

118. A second marriage cannot be contracted before the dissolution of the first.

(*n*) This article was added in 1903 (3 Edw. 7, c. 47, s. 1), in substitution for a previous addition made by Article 5785 of the Revised Statutes of Quebec.

(*o*) As to effect of *delirium tremens* on capacity, see *Scott v. Paquet* (1867), L. R. 1 P. C. 553.

(*p*) See *Dorion v. Laurent* (1843), 17 L. C. Jur. 324; *Lussier v. Archambault* (1848), 11 L. C. Jur. 53; 4 Can. L. J. 42.

(*q*) As to annulment, see *Burn v. Fontaine* (1871), 3 *Revue Legale*, 516.

119. Children who have not reached the age of twenty-one years must obtain the consent of their father and mother before contracting marriage. In case of disagreement, the consent of the father suffices.

120. If one of them be dead or unable to express his will, the consent of the other suffices.

121. A natural child who has not reached the age of twenty-one years must be authorised, before contracting marriage, by a tutor, *ad hoc*, duly appointed for the purpose.

122. If there be neither father nor mother, or if both be unable to express their will, minor children, before contracting marriage, must obtain the consent of their tutor, or, in cases of emancipation, their curator, who is bound, before giving such consent, to take the advice of a family council, duly called to deliberate on the subject.

123. Respectful requisitions to the father and mother are no longer necessary.

124. In the direct line, marriage is prohibited between ascendants and descendants, and between persons connected by alliance, whether they are legitimate or natural.

125. In the collateral line, marriage is prohibited between brother and sister, legitimate or natural, and between those connected in the same degree by alliance, whether they are legitimate or natural [but it is permitted between a brother and his deceased wife's sister] (*r*).

126. Marriage is also prohibited between uncle and niece, aunt and nephew.

127. The other impediments recognized according to the different religious persuasions, as resulting from relationship or affinity or from other causes, remain subject to the rules hitherto followed in the different churches and religious communities. The right, likewise, of granting dispensations from such impediments appertains, as heretofore, to those who have hitherto enjoyed it.

CHAPTER SECOND.

Of the Formalities relating to the Solemnization of Marriage.

128. Marriage must be solemnized openly, by a competent officer recognized by law.

129. All priests, rectors, ministers and other officers authorised by law to keep registers of acts of civil status (*s*) are competent to solemnize marriage (*t*); but none of the officers thus authorised can be compelled to solemnize a marriage to which any impediment exists according to the doctrine and belief of his religion and the discipline of the church to which he belongs.

130. The publications of banns required by Arts. 57 and 58 are made by the priest, minister, or other officer in the church to which the parties belong at morning service, or if there be no morning service, at evening service on three Sundays or holidays, and in the case of persons belonging to the Jewish religion on three Saturdays or holidays with reasonable intervals. If the parties belong to different churches, these publications take place in each of such churches (*u*).

131. If the actual domicile of the parties to be married has not been established by a residence of six months at least, the publications must also be made at the place of their last domicile in Lower Canada.

132. If their last domicile be out of Lower Canada and the publications have not been made there, the officer who in that case solemnizes the marriage, is bound to ascertain that there is no legal impediment between the parties.

(*r*) The words in square brackets were added in 1888 (Rev. Stats. sect. 6230) to give effect to Dominion Legislation (*ante*, p. 246). It seems to have been unnecessary in Quebec to refer to deceased wife's sister's daughter.

(*s*) Under Articles 42—53 of the Code, which provide for parochial registers for Roman Catholic parishes, and registers for other religious communities.

(*t*) As to resort of a Roman Catholic to a Protestant church for marriage, see *Laramée v. Evans* (1880), 3 Leg. News, 342.

(*u*) This article, in its present form, was enacted in 1903 (3 Edw. 7, c. 47, s. 2).

133. If the parties or either of them be, in so far as regards marriage, under the authority of others, the banns must be also published at the place of domicile of those under whose power such parties are.

134. The authorities who have hitherto held the right to grant licences (*x*) or dispensations for marriage may exempt from such publications.

135. A marriage solemnized out of Lower Canada between two persons, either or both of whom are subject to its laws, is valid if solemnized according to the formalities of the place where it is performed, provided that the parties did not go there with the intention of evading the law.

CHAPTER THIRD.

Of Oppositions to Marriage.

136. By a person already married to one of the parties proposing to contract.

137—139. In case of a minor, by the father, or in default by the mother, or in default of both by the tutor, or in cases of emancipation the curator, or in default of any of the above, or if the tutor or curator has consented, by the family council, if the party to be married has not consulted them, or is insane.

140. Provides for appointing a tutor or curator where there is none, and the family council objects to the marriage.

141. Provides for opposition to the marriage of an adult who is insane and not interdicted.

142—147. Regulate the procedure on the opposition and adjudication thereon by the Court of original jurisdiction of the domicil of the party whose marriage is opposed.

CHAPTER FOURTH.

Of Actions for annulling Marriage.

CHAPTER SEVENTH.

Of the Dissolution of Marriage.

185. Marriage can only be dissolved by the natural death of one of the parties ; while both live it is indissoluble.

Legitimation *per subsequens matrimonium* is recognized. (Civil Code, Arts. 237, 238.)

NEWFOUNDLAND.

The marriage law of the colony rests on the common law of England as modified by colonial legislation (*y*). There has been no change in the law as to the prohibited degrees or necessary consents, nor any statute giving jurisdiction to dissolve marriage. The Colonial Acts relative to the celebration of marriage are c. 133 of the Consolidated Statutes, ed. 1892 (amended in 1893 (c. 18), with reference to the Salvation Army), and the Foreign Marriage Act, 1904, c. 9, passed to give effect to the Foreign Marriages Order in Council, 1903 (*ante*, p. 126).

As a general rule, no person may solemnize marriage in Newfoundland or its dependencies unless he is—

- (1) A person in holy orders ;
- (2) A resident minister publicly recognized as the pastor or teacher of a congregation having a church or chapel ;
- (3) A person employed to discharge the duty of teacher or preacher of religion, and duly licensed to celebrate marriage by the Governor (*z*) ;

(*x*) As to marriage of a Roman Catholic by licence without banns, see *Burn v. Fontaine* (1872), 4 *Revue Légale*, 163.

(*y*) 2 *Journ. Comp. Leg. Soc.* (N. S.) 284, Sir J. S. Winter.

(*z*) *Cons. Stat.* c. 133, s. 1.

- (4) A duly appointed commissioner or staff officer of the Salvation Army resident in the colony chosen or commissioned by the society to solemnize marriages, a copy of whose commission or appointment has been deposited in the office of the Colonial Secretary (*a*).

If a woman about to be married lives ten miles from the nearest clergyman, or teacher, or preacher of religion licensed to marry, the marriage may be solemnized by a magistrate licensed by the Governor; or if there is no clergyman, nor any preacher, teacher, or magistrate so licensed within fifteen miles of the woman's home, a layman duly licensed by the Governor may celebrate the marriage (*aa*).

Solemnization of the marriage of persons, either of whom is under age, is punishable unless the officiant has published the banns on three successive Sundays in a church or chapel (*c*), or, if there is no church or chapel, has caused notice of the marriage to be placarded in a conspicuous place of public resort for three weeks immediately before the wedding (*b*), or has obtained the consent of parents or guardians to the marriage (*b*).

The marriage must be solemnized in the presence of two "credible" witnesses (*c*). Provision made for registration by the officiant of a certificate of the marriage, signed by the parties and by two "credible" witnesses present at the ceremony (*d*). The register or certificate is evidence (*e*).

THE BERMUDAS (*f*).

In these islands the general law as to marriage rests on the law of England as of 1612 (*g*) modified by island legislation, which has not altered the prohibited degrees nor given any matrimonial jurisdiction to the Supreme Court. Lord Lyndhurst's Act (*ante*, p. 81) does not apply to the islands.

The law of the islands as to the solemnization of marriage is consolidated, with amendments, in the Marriage Act, 1905 (No. 27) (*h*).

No marriage solemnized in the islands after the commencement of the Act is valid unless celebrated—

- (a) By an incumbent or licensed minister after the publication of banns or the grant of a licence in the manner and subject to the conditions in the Act laid down; or
- (b) In the case of marriages between parties who are both Quakers, or who are both Jews according to the rites and usages of their religious society and after licence obtained from the Governor (*i*).

"Incumbent" means the incumbent or rector of a Church of England benefice in the islands, and includes the bishop and archdeacon of the diocese of Bermuda and the residentiary canon of the cathedral (sect. 3).

"Minister" includes any clergyman or member of any Christian body other than an incumbent, and, in the case of the Salvation Army, includes any officer who satisfies the Governor that he is duly authorised by the proper authority in the Army to perform marriages between members of the Army (sect. 3).

(a) Act of 1893, c. 18, s. 1.

(aa) *Ibid.* sect. 7.

(b) *Ibid.* sect. 3.

(c) *Ibid.* sect. 2.

(d) *Ibid.* sects. 4, 8.

(e) *Ibid.* sects. 5, 8, 9. Further provisions as to registers and returns are made by c. 28 of the Consolidated Statutes, amended in 1899 (c. 9). The registering officers under these Acts are clergymen and other persons legally licensed to celebrate marriage. No duty under the Acts now devolves on the parties to the marriage.

(f) See 2 Journ. Comp. Leg. Soc. (O. S.), vol. ii. 261.

(g) Supreme Court Act, 1905 (No. 4), s. 12.

(h) It repeals two Acts of 1847 (Nos. 19 and 20) (Cons. Stats. cc. 144, 145).

(i) Sect. 1.

“Christian body” includes the Church of England, the Roman Catholic Church, the Presbyterian Church, the Wesleyan Methodist Church, the Reformed Episcopal Church, the African Methodist Episcopal Church, the Salvation Army, and any other body proclaimed as a Christian body by the Governor in the Gazette. Power is given by proclamation to take off the list of Christian bodies churches proclaimed to be such (sect. 3).

The Marriage Act, 1906 (No. 6), gives to naval and military chaplains the position of incumbents in the case of marriages where either party is a member, or the son or daughter of a member, of the King’s sea or land forces.

By the Act of 1905, the Governor is empowered to grant to ministers licences to celebrate marriage, and to revoke the same if the conduct of the minister renders it expedient to take that course (sect. 3).

Banns are published by incumbents or licensed ministers on written notice by one of the parties to an intended marriage, giving the prescribed particulars (sects. 4, 5).

The publications must be on three Sundays preceding the solemnization at morning service, if any; at afternoon or evening service if there is no morning service. If the parties belong to different Christian bodies, or usually attend different places of worship, the banns must be published in the place of worship which each party usually attends (sect. 6).

Certificates of due publication are to be given on request (sect. 7).

Licences are granted by the Governor on being satisfied by affidavit made before the Colonial Secretary that there is no impediment of kindred, or affinity, or other lawful hindrance, and in case of minors not *sui juris*, that the required consents have been given, or that no person has authority to give the consent (sects. 10, 17, 18).

Provision is made for caveats by persons whose consent is necessary to a marriage, adjudication on a caveat, or by the Governor in Council (sects. 13—16).

The licence is addressed to an incumbent or licensed minister, and, subject to dispensation by the Governor, is not issued without a certificate from the incumbent or licensed minister, or from a justice of the peace, or two approved householders who personally know the parties seeking to marry.

The marriage must be celebrated within three months of publication of banns or grant of licence (sect. 11).

Unless the licence otherwise allows, marriage by licence must be solemnized in a parish in which one of the parties resides, or if the licence is addressed to an incumbent, in the living in which he resides (sect. 12).

Solemnization is to be according to the rights and usages of the church or denomination to which the incumbent or minister belongs, in the presence of two or more credible witnesses. The ceremony must contain an exhortation to declare impediments, and words of assent by the parties to take each other as husband and wife (sect. 19).

Except where the parties are *both* members of his congregation, and their banns have been published in the congregation, the incumbent, &c. may not marry them till he has received a licence or certificates of due publication of banns (sect. 20).

The only irregularities in complying with the Act which render the marriage void are knowing and wilful acquiescence by both parties in celebration without due publication of banns, or due issue of licence, or before a person not authorised under the Act to celebrate marriages (sect. 22).

Provision is made for marriage register books, and for entering marriages therein, for inspection and copies, and making the books good evidence (sects. 25—30).

There are several enactments validating marriages void for irregularity (*k*).

(*k*) 1847 (No. 18); Cons. Stats. (No. 143); 1866, sess. 2 (No. 17) (Cons. Stats. No. 251); and 1905 (No. 27), s. 32, which validates marriages celebrated on or since 19th January, 1888, under licences by the Governor, purporting to act as ordinary.

WEST INDIES AND CENTRAL AND SOUTH AMERICA.

BAHAMAS.

The marriage law of the colony is the common law of England as modified by certain specified English statutes and by Acts of the colonial legislature (*l*).

Prohibited degrees.—Marriage with a deceased wife's sister was made legal in 1907 (*m*). Marriages voidable for being within the prohibited degrees may be declared null by the Supreme Court, which has jurisdiction in matrimonial causes, to accord with the law and practice of England *for the time being* which is declared to extend to the colony (*n*).

The law of the colony as to celebration and registration was amended and consolidated by the Marriage Act, 1908 (*o*) (7 & 8 Edw. 7, c. 4), as amended in 1909 (9 Edw. 7, c. 27).

Marriage solemnized in the colony otherwise than under the provisions of these Acts is of no effect (1908, s. 3).

The Act provides for the constitution of marriage officers, including—

- (1) Registrars of marriages *ex officio*, including magistrates in their respective districts, unless the Governor otherwise orders (*p*);
- (2) Such ministers of religion and other persons as are entitled to appointment and are by the Governor appointed and registered to act as such (*q*).

Registrars may, subject to the approval of the Governor, appoint deputies to act for them in the case of illness and absence (*r*). Ministers of religion, whether they act for one congregation or have the local superintendence of several, are ordinarily entitled to be registered as marriage officers for such congregations (*s*), and to act so long as they continue to act for or as local superintendents of the congregations (*t*), unless they resign the office of marriage officer (*u*). Provision is made for temporary absence from their charge in the colony (*x*).

No minister who is not a marriage officer may publish banns of marriage unless expressly authorised by a marriage officer (*y*).

A minister who is a marriage officer is not bound to act as such with respect to any marriage which is contrary to the rules of the religious denomination to which he belongs (*z*).

To authorise solemnization of marriage there must ordinarily be—

- (a) A certificate or certificates of a registrar of marriages;
- (b) A certificate or certificates of some other marriage officer; or
- (c) A licence from the Governor.

These preliminaries may be dispensed with where the marriage is between two persons who have lived in unlawful connection and one of whom is in

(*l*) 40 Geo. 3, c. 2 (Bahamas). This Act (sect. 1) applies the common law, as modified by 32 Hen. 8, c. 38, and other specified statutes, but not the other Marriage Acts of Hen. 8, nor Lord Hardwicke's Act. See Journ. Comp. Leg. Soc. (O. S.), vol. i. p. 296.

(*m*) 7 Edw. 7, c. 9.

(*n*) 59 Vict. c. 26, s. 35.

(*o*) The Act of 1908 came into effect on proclamation (sect. 55). It repeals most of the former colonial legislation as to marriage, except certain validation Acts (1 Vict. c. 4; 2 Vict. c. 13, ss. 8, 13, 14; 13 Vict. c. 2; 23 Vict. c. 23; 25 Vict. c. 37), and the Foreign Marriage Act, 1904 (4 Edw. 7, c. 5). *Vide ante*, pp. 53, 119, 126.

(*p*) 1908, ss. 6, 8.

(*q*) 1908, ss. 6, 7, 15; as amended 1909, s. 7.

(*r*) 1908, s. 11.

(*s*) If the Governor refuses to make such appointment, or removes a minister from the register, he must report his reasons to the Secretary of State (1909, s. 7).

(*t*) 1908, s. 13; 1909, s. 13.

(*u*) 1908, s. 12.

(*x*) *Ibid.* s. 14.

(*y*) *Ibid.* s. 15 (d).

(*z*) *Ibid.* s. 9.

articulo mortis, and is celebrated as prescribed by sect. 31. Such marriages do not operate to revoke any will.

- (a) The registrar's certificate is obtained after notice to him, which is entered in a marriage notice book and published at the registry for seven days after receipt. The notice contains statements verified by declaration of the party and householder as to residence, consents where needed, and absence of impediment. (Schedule A.)
- (b) The marriage officer's certificate or certificate of banns is obtained by giving a notice of banns (Schedule D.) which is entered in a marriage banns book, published for a period extending over three Sundays outside the place of worship, and published audibly during divine worship during the morning or evening service on each of three successive Sundays, or, in the case of Jews, Saturdays. When all this is done, the minister, if a marriage officer, gives a certificate. Provision is made for cases in which the parties belong to different congregations or to none.
- (c) The Governor's special licence is granted on application through the Registrar-General on proof that there is no legal impediment and of the giving of any necessary consents (a).

Provision is made as to the consents necessary in case of persons under twenty-one who are not *sui juris*, and for obtaining, and, if need be, dispensing with the consent of parents or guardians (b), and for notifying and adjudicating upon objections to a marriage (sect. 21).

The marriage must be celebrated in the presence of two credible witnesses between 6 a.m. and 8 p.m. with open doors, and before or during the ceremony there must be a declaration of no impediment and of consent to marriage (sect. 23). The marriage may be celebrated with a religious service before a minister who is a marriage officer (sect. 23), or before a registrar of marriages without religious service (sect. 24). If celebrated in the latter manner, it may be followed by a celebration before a minister of religion on production of the registrar's certificate (sect. 25).

The person celebrating the marriage must register it in the proper register book and comply with the regulations as to returning registers, &c. to the Registrar-General (sects. 15e, 26, 43).

Penalties for solemnizing otherwise than under the Act or for false statements to obtain marriage or false certificates are imposed (c).

BARBADOS.

This colony was planted in 1624, and has had a local legislature since 1652.

It is under the common law of England as of the date of planting, so far as applicable (d), and subject to subsequent local and Imperial legislation.

The island legislation on marriage is contained in the consolidating and amending Marriage Act of 1891 (e), as amended in 1905 (f), the Registration Act, 1891 (g), and the Foreign Marriage Act, 1904 (h).

Prohibited degrees.—Every marriage otherwise lawful contracted in the island or elsewhere, or to be contracted between a man and the sister of his deceased wife, is to be treated as valid in the island (i). No clergyman in holy

(a) 1908, s. 19, as amended in 1909.

(b) 1908, s. 20, as amended in 1909.

(c) 1909, s. 47a.

(d) First Report West Indian Commissioners, p. 5: Journ. Comp. Leg. Soc. (N. S.), vol. ii. p. 102, Reeves, C. J.

(e) No. 15. Laws of Barbados, vol. ii. p. 468; Cons. Stat. (ed. 1893).

(f) No. 1. Laws of Barbados, vol. vi. p. 41.

(g) No. 19. Laws of Barbados, vol. ii. p. 485.

(h) No. 41. Laws of Barbados, vol. vi. p. 31. *Vide ante*, pp. 53, 119, 126.

(i) 1891 (No. 15), s. 18. There is a proviso as to such marriages contracted before

orders of the Anglican Church, or other clergyman, can be compelled to celebrate such a marriage (*k*).

Solemnization.]—The Act of 1891 provides for marriage—

- (a) After publication of banns ;
- (b) After licence ;
- (c) After notice to a police magistrate.

It contains detailed provisions forbidding clandestine marriages (*l*).

Any minister of the Christian religion ordained, or otherwise set apart to such ministry according to the usage of his persuasion, may publish banns of marriage (sect. 1). Before publication the parties must give the minister a written notice (sect. 3). The publication is to be on three Sundays before the wedding during morning service, if any, or if not, during evening service, and, where the parties belong to different congregations, in the church of each.

The Governor as ordinary has power to issue marriage licences—

- (a) For marriage without banns in any place by any minister by whom a marriage by banns could be celebrated (sects. 5, 17).
- (b) For civil marriages before a police magistrate (1891, ss. 20—23). An oath is required, before issue of the licence, that the names are not feigned, and that the parties are of full age or have the needed consent (1905, s. 3).
- (c) A police magistrate on receipt of a notice for civil marriage publishes it in a conspicuous place in his office for fourteen days. If the parties live in different districts publication is made in both, and a certificate produced to the magistrate who is asked to celebrate the marriage (sects. 23, 24).

Provisions are made, substantially the same as in England, as to forbidding banns (sect. 4) or the celebration of a civil marriage (sect. 29), and as to consents in the case of persons not *sui juris* (sects. 6, 29).

A marriage may be solemnized by a minister of the Christian religion after banns published by him, or certificate of banns duly published by another minister (1891, s. 2 ; 1905, s. 2), or a Governor's special licence. The marriage must be solemnized between 8 a.m. and 9 p.m., with open doors, in the presence of two or more credible witnesses (sect. 9).

If the ceremony of the Anglican Church is not used, the ceremony used must include declarations of no impediment and of consent to marry (sect. 2).

Clinical marriage.]—Provision is made for celebrating a marriage without banns or licence by a minister of religion between persons in his district, one of whom is likely to die. Such marriage may be celebrated at the house where the sick person is at any hour of day or night (sect. 10).

Marriages celebrated *ut supra* must be at once registered by the minister (sects. 9, 10).

Civil marriages may be celebrated by the police magistrate (on licence or notice and certificate) at any time between 8 a.m. and 2 p.m. in his office, with open doors, in the presence of not less than two witnesses, or at any time between 8 a.m. and 9 p.m. at any private residence within his district (sect. 26), or, in case of a person very ill and likely to die, at any hour without notice or licence (sect. 27).

The civil ceremony includes (1) questions as to the identity of the parties and as to their having, if minors, the required consents ; (2) a declaration of no impediment ; (3) a declaration by each party that he or she takes the other as husband or wife (sect. 26).

21st July, 1885, when the island legislation first recognized them (Acts 1884—85, No. 22).

(*k*) 1891, s. 19.

(*l*) Sects. 12—16.

BRITISH GUIANA.

In this colony the marriage laws depend mainly on local ordinances, but, so far as they are silent, rest upon the Roman-Dutch law in force at the time of conquest and cession (*k*). Roman-Dutch law recognizes legitimation *per subsequens matrimonium*.

The colonial legislation on marriage is contained in ordinances of 1901 (No. 25, Consolidation and Amendment) (*l*); 1902 (No. 29, Deceased Wife's Sister); 1903 (No. 36, Foreign Marriage) (*m*); 1904 (No. 12) and 1891 (No. 18, Asiatic immigrants).

The Marriage Ordinance, No. 25 of 1901, does not directly affect the marriage of Asiatic immigrants under the Act of 1891 (*post*, p. 266), but deals with aboriginal Indians by empowering the Governor to make regulations with regard to the publication of banns of marriage between them (sect. 71).

Restrictions on marriage.—By sects. 28, 29, inter-marriage is prohibited, and the marriage if celebrated is absolutely void—

- (1) Between any persons who by the common law of the colony may not intermarry.
- (2) In the case of persons related by blood between—
 - (a) Ascendants and descendants, namely, parents and children upward and downward *ad infinitum*.
 - (b) Brothers and sisters or step-brothers and step-sisters.
 - (c) Uncles and their nieces (*i.e.*, their brothers' and sisters' children or grandchildren and their descendants) or aunts and their nephews (*i.e.*, their brothers' and sisters' sons or grandsons or their descendants) in both classes of cases *ad infinitum*.
- (3) In the case of persons related by affinity between—
 - (a) A husband and any kinswoman or kindred of his deceased wife, *except his deceased wife's sister*, or a wife and any kinsman or kindred of her deceased husband, related to such husband or wife in the herein-before stated degrees, *viz.*: between any man and his daughter-in-law (*i.e.*, his son's widow or his son's or daughter's son's widow, and so downward, any widow of any of his descendants); between any wife and her son-in-law (*i.e.*, the husband of her deceased daughter or the husband of her son's or daughter's daughter, and so downward, the husband of any of her descendants).
 - (b) Any man and his step-daughter (*i.e.*, the daughter of any former marriage of his wife, or any of his said wife's descendants), or any woman and her step-son (*i.e.*, the son of a former marriage of her deceased husband or any of her said husband's descendants).
 - (c) Any man and his wife's niece or the widow of his nephew (*i.e.*, the widow of his brother's or sister's son or of any of his brother's or sister's descendants), or any woman and her husband's nephew or the widower of her brother's or sister's daughter, or the husband of any of her brothers' or sisters' grandchildren and descendants).

The enactment closely follows the Roman-Dutch law as settled by the Political Ordinance of 1580 (*n*).

The common law restrictions under head 1 are those of the Roman-Dutch law (*o*), and include prohibition of marriage between persons who have committed adultery with each other (*p*).

In the case of persons under twenty-one who are not widowers or widows,

(*k*) See Journ. Comp. Leg. Soc. (O. S.) vol. i. p. 140; Order in Council, 7th September, 1838; Reports West Indian Commissioners.

(*l*) Printed as amended up to 1905 in Laws of British Guiana, vol. iv. p. 188. It seems to supersede the Order in Council of 7th September, 1838 (*post*, p. 286).

(*m*) *Vide ante*, p. 126.

(*n*) See Nathan, Common Law of South Africa, vol. i. p. 216.

(*o*) See Nathan, Common Law of South Africa, vol. i. pp. 212, 213; *Rabot v. De Silva*, (1909) A. C. 376, 381.

(*p*) Nathan, vol. i. p. 213; *vide ante*, p. 49 (Scotland); and *vide post*, p. 284 (South Africa); p. 307 (Ceylon).

marriage is restricted by declaring that no marriage shall take place if either party is a minor (not emancipated by prior marriage) without the consent of the father, or, if he be dead, of his guardians, or if there are none of the mother, if living and unmarried, or, failing her, of guardians appointed by the Court (sect. 30). The Chief Justice deals with cases where, from specified causes, consent cannot be obtained, or where it is improperly refused (sect. 31). Disobedience to these rules does not seem to annul the marriage (sect. 65).

Banns—Solemnization.]—The Governor may appoint as a marriage officer any male minister of the Christian religion ordained or otherwise set apart to the ministry according to the usage of the persuasion to which he belongs.

The appointment is entered in a register and gazetted. Buildings used for Christian worship may be registered for the publication of banns; and a notification must be conspicuously placed at a main entrance: "Banns may be published in this building" (sects. 20—27).

The banns must be published with the assent of the minister of the church (sect. 27) during public divine service in the face of the congregation, and on three Sundays within a period not exceeding three months before the celebration of the marriage (sect. 33).

A previous notification is required, including a statement of no impediment (sect. 34, as amended by the Ordinance No. 12 of 1904, s. 27). If the marriage is not to be in the church where the banns are published, the minister must give a certificate of publication (sect. 36).

Marriage licences may be issued by the Governor for celebration before any marriage officer who could celebrate marriage after banns. The licence is obtained by petition verified as required as to parties, place of proposed marriage, residence, impediments, consents, &c. (sects. 38—44, as amended by Ord. No. 12 of 1904, s. 27).

The superintendent registrar of each marriage district, after receiving a marriage or notice containing the prescribed statements and due publication thereof for twenty-one days, may issue a certificate if no valid impediment has been discovered and no objection of legal impediment has been made. Such objections if made are dealt with by a judge of the Supreme Court (sects. 45—50).

Celebration.]—A marriage may not be celebrated unless there is produced to the marriage officer or superintendent registrar—

A Governor's licence;

A certificate of publication of banns;

A certificate of a superintendent registrar;

(in each case still in force, *i.e.*, not over three months old).

Where the marriage officer or registrar who solemnizes also published the banns or gave the certificate, he need not call for the certificate.

Religious marriage must be celebrated between 6 a.m. and 9 p.m. by a marriage officer in the presence of two or more other credible witnesses. The form and ceremony is what the parties choose, provided that the consent of the parties to take each other as husband and wife is clearly expressed in the presence of the officer and the witnesses.

Civil marriage may be celebrated between 10 a.m. and 4 p.m. in the office of a superintendent registrar in the presence of the officer and at least two other credible witnesses. Each party must say, "I call on these persons here present to witness that I, A. B., do take thee, C. D., to be my lawful wedded wife [*or husband*]." In the case of East Indian immigrants, neither party need pronounce the name of the other party (*q*).

Clinical marriages.]—A marriage officer is allowed to celebrate a marriage without licence, certificate of marriage, notice or banns if the officer (from a certificate of a medical practitioner in attendance, or, failing that, from his own observation) believes one of the parties to be *in articulo mortis*, and if such party before the celebration declares that he or she believes himself or herself to be on the point of death. The marriage must be in the presence of at least two credible witnesses, and both parties must be able to signify their consent. Provision is made for marriage of persons not *sui juris*. The marriage is

(*q*) From religious scruples or difficulty of pronunciation.

specially registered, and the certificate, if any, of a medical practitioner is sent to the Registrar-General (sect. 60).

Marriage districts and registration.]—The colony is divided into registration districts for the purpose of marriage (sect. 3), and the superintendent registrar of births and deaths in each district is also *ex officio* superintendent registrar of marriages (sect. 15). Full provision is made for the supply of register books to such registrars (sect. 17) and marriage officers (sect. 53) and for keeping the registers and entering marriages therein immediately after celebration (sect. 56).

Legitimation by subsequent marriage is recognized in the colony (*r*): but a father cannot legitimize his bastards by adoption without marrying their mother (*s*).

Matrimonial jurisdiction.]—The Supreme Court Ordinance (No. 7 of 1893) does not specifically refer to divorce, but the Court has the jurisdiction of a Superior Court of Record in England, and all authorities, &c. which at the date of the Conquest were incidental to the High Court of Justice in Holland. The Roman-Dutch law appears to admit divorce by judicial decree for adultery of either spouse, or malicious desertion (*t*). In British Guiana there is jurisdiction to grant a judicial separation, derived from the Placaat of 1656 (*u*), and to grant a divorce for malicious desertion and adultery, if the plaintiff has not himself been guilty of adultery (*x*), or has not condoned the adultery on which the decree is claimed (*y*). In chastity of one spouse before marriage, unknown to the other at the date of marriage, unless it is followed by pregnancy, is not ground for annulling the marriage (*z*).

Asiatic immigrants.]—The Asiatic Immigration Ordinance (1891, No. 18) requires the immigration agent-general, on the arrival of immigrants, to ascertain whether any of them stand in the relation of husband and wife to each other; and if satisfied that the relation exists enters them on the immigration register, and gives each of them a certificate of marriage (sect. 141).

There is also kept a register of marriages of immigrants contracted in the colony (sect. 143).

In the case of Christian immigrants the rules as to capacity or incapacity to contract marriage, and the conditions subject to which, and the manner in which, marriage may be contracted, depend on the general law of the colony.

(1) On the arrival of the immigrant if he arrives a Christian.

(2) On his conversion if he is converted after arrival (sect. 144).

All immigrants may contract marriage after arrival subject to the following conditions:—

That the marriage will be null and void *ab initio* if either party had at the date of marriage a spouse alive, or if either party is directly descended from the other, or if the female is a sister of the male, either by the full or the half-blood, or if the male is a brother of the female either by the full or the half-blood (sect. 14).

The minimum age for marriage is fifteen for a male and thirteen for a female. Certain prescribed notices must be given to the magistrate of the district and duly published, and inquiry made as to age, consents, impediments, &c., after which the parties appear before the proper magistrate, who, when satisfied of identity, &c., declares them married, and gives each a certificate, and transmits a copy to the immigration agent for registration. Provision is made for marriage in Christian form after banns (sect. 150), and for marriages between *non-Christian immigrants who profess the same religion, and are under the same personal law*. These marriages are contracted according to the religion and personal law, and registered (sects. 151, 152).

(*r*) As part of the Roman-Dutch Law. See Nathan, *Common Law of South Africa*, vol. i. p. 100.

(*s*) *British Guiana Digest*, 1901—1905, p. 82.

(*t*) Nathan, *Common Law of South Africa*, vol. i. p. 278.

(*u*) *Menezes v. Menezes*, *British Guiana Digest*, 1901—1905, p. 82.

(*x*) *Glasgow v. Glasgow* (*ibid.* p. 83).

(*y*) *Dance v. Dance* (*ibid.* p. 84).

(*z*) *Oudkerk v. Oudkerk* (*ibid.* p. 82). This rests on the Roman-Dutch Law as to *stuprum*. *Vide* Nathan, vol. i. p. 100.

Provision is also made for summary divorce of immigrants by the Chief Justice, on reports of the evidence taken by a magistrate (sects. 162, 163).

BRITISH HONDURAS.

British Honduras was declared a British colony in 1862. Its laws are of English origin. Those in force before it became a colony are known as Burnaby's laws. The colonial law was revised and consolidated in 1887, and the revised law book was put into force in 1888. (Ord. No. 7.)

By c. 7 of the Consolidated Laws of the Colony of 1887, which came into force on 15th December, 1888 (*a*), the common law of England and all statutes of the Imperial Parliament, in abrogation or derogation or in any way declaratory of the common law extend to the colony (sect. 3), and the statutes are to be read as if locally enacted (sect. 2). But the extension is only so far as the jurisdiction of the Court and local circumstances reasonably permit and render such extension suitable and appropriate and subject to existing and future laws of the colonial legislature (sect. 1).

The colonial legislation as to celebration and registration of marriage rests on the Marriage Ordinances of 1889 (No. 18) (*b*), 1890 (No. 1), 1900 (No. 18), 1907 (No. 10), and 1908 (No. 8), and the Foreign Marriage Ordinance, 1903 (No. 14) (*c*).

Marriage with a deceased wife's sister was made legal in 1908. (Ord. No. 8.)

Restrictions.]—The Ordinance recognizes that marriage may be rendered void or voidable by fraud or incapacity to contract marriage, or by relationship, kindred, or alliance (1889, c. 18, ss. 1, 8). The prohibited degrees are the same as in England.

Marriages with a deceased wife's sister have been declared not to be void or voidable by reason only of such affinity (1908, No. 8, s. 2). The provision is retrospective, subject to the same limitations as under the British Act.

The marriage of a person under 21 not *sui juris*, needs the written consent of the father if in the colony; or if he is not, of a guardian appointed by him; or if there is no such guardian in the colony, of the mother if in the colony. Provision is made for obtaining the written consent of a justice of the peace or alcalde if there is no person available in the colony to give consent (1889, ss. 12, 13; 1907, No. 10, s. 1).

Wilfully marrying a minor without the prescribed consents is a misdemeanour (sect. 17); so is forging the consents (sect. 18).

There is no express provision as to the publication of banns or the grant of special licences.

Celebration—officiant.]—No marriage may be celebrated except—

(1) Before a minister of religion, ordinarily officiating as such, whose name, designation and usual residence has been and continues registered in the office of the colonial secretary (1889, ss. 2—4, as amended by 1900, No. 18, s. 1); or

(2) If the parties so elect, by a district magistrate (sect. 2).

There is a saving as to marriages in good faith celebrated before an unqualified person acting as marriage officer (1889, s. 8; 1900, s. 1), and a person once registered is conclusively deemed competent to celebrate marriages so long as he continues registered.

Place.]—The restrictions as to the place of marriage imposed in the Ordinance of 1889 were removed in 1890 (No. 1).

Form, &c.]—Two witnesses at least must be present and sign a certificate in a prescribed form, also signed by the officiating minister or magistrate (sect. 9).

Before the marriage each party must make a declaration of no impediment (sect. 7), and in the ceremony each party must say that he or she takes the other by name to be his or her wedded wife or husband (sect. 10).

(*a*) See Ord. No. 7 of 1888 (Journ. Comp. Leg. Soc., 1897, p. 367).

(*b*) Which supersedes c. lxxix. of Pt. XXV. of the Consolidated Laws of 1887.

(*c*) *Vide ante*, pp. 53, 119, 126.

Validity.]—Marriages are not invalidated by defects or error in declarations if the identity of the parties is not in question (sect. 14).

Registration.]—The minister or magistrate is required to register the marriage and transmit a certificate thereof to the colonial secretary (1889, ss. 8, 15, 20).

FALKLAND ISLANDS.

The law of this colony and its dependencies rests on the law of England (*d*) as modified by local Ordinances. The principal of these is No. 8 of 1902 (*e*), which regulates the celebration of marriage.

By sect. 3 every marriage which by the law of England would be valid, and every marriage celebrated in the colony prior to 31st December, 1902, by any minister of religion or by a registrar, is to be deemed a perfectly legal and valid marriage to all intents and purposes. But nothing in the Ordinance legalises any marriage—

- (a) Declared or made invalid by any law of the colony at the time of its celebration; or
- (b) Declared or made, or which may hereafter be declared or made, invalid by any competent Court.

By sect. 4 no marriage celebrated in the islands is legal which by reason of relationship, or of fraud, or of incapacity to contract marriage, *or by the law of England for the time being* would be void. Marriage with a deceased wife's sister was made legal in 1909 (Ord. No. 3).

No marriage may be celebrated in the islands—

- (a) Until a marriage licence has been issued or banns published as prescribed;
- (b) More than three months after issue of the licence or publication of the banns;
- (c) Except in a place registered for the celebration of marriages, or the office of a registrar, or the house of a justice of the peace, or such place as a special licence may specify.
- (d) In any building with closed doors, or before eight a.m. or after six p.m.;
- (e) Save in the presence of two witnesses, who shall sign the certificate of marriage (sect. 7).

Provision is made for certifying the registration for marriage of places commonly used for religious purposes, and for registering ministers of religion who may solemnize marriage (sects. 6, 9).

Certain places and certain ministers specified are to be deemed as registered. (*Ibid.*) But marriage before an unqualified person is good if the parties, in good faith, believed him qualified (sect. 4).

No specific provisions are made as to publication of banns, but marriages by banns must take place in a registered building.

Marriages may be celebrated in the office of a registrar or a marriage licence issued by the Registrar-General after declaration made and signed before a registrar or justice, and of intended marriage duly published in the office of the Registrar-General for registering (sects. 11—15). A special licence may be issued by the Governor after receipt of a declaration (sect. 8), and may authorise marriage at any time or place by a minister or registrar (sect. 8). Provision is made for requiring evidence of consent in the case of minors not *sui juris* and for adjudication by the Chief Justice on refusals to give consent or caveats (sects. 8, 16, 17, 18).

(*d*) The Charter of Government is dated 23rd June, 1843. See Journ. Comp. Leg. Soc. (N. S.), vol. ii. p. 115. English common law and equity and statutes of general application as of 22nd May, 1900, are in force in this colony and certain of its dependencies, so far as local circumstances and the limits of colonial jurisdiction permit, but subject to local ordinances, and to Orders in Council and to such qualifications as local circumstances require. (Ords. 1908 (No. 6, s. 2, and No. 9).)

(*e*) No. 8, which repeals former ordinances relating to marriage, viz., 1858, No. 1; 1872, No. 4; 1881, No. 3; and 1882, No. 7.

In celebrating the marriage it is essential that each party should say to the other, immediately before the ceremony, in the presence of the officiant and the witnesses, "I take thee to be my wedded wife (or husband)" (sect. 19).

Certificates of marriage are made out in triplicate, and signed by the parties, the witnesses and the officiant. One copy is sent to the Registrar-General, one given to the husband, and the third recorded in a book by the officiant (sect. 20).

Marriages are not invalidated by mere defects or errors in the declaration, if the identity of the parties is not in question, nor by want of the consents required by law (sect. 22).

GRENADA.

The marriage laws of this colony rest on the law of England (*f*), as modified by colonial legislation. The chief ordinance on the subject is a consolidating and amending ordinance of 1900, No. 12 (*g*). There is also a Foreign Marriage Ordinance (1903), No. 8 (*h*).

The general rules as to capacity and consent are those of English law. Specific provision is made for the procedure in the case of the marriage of persons under twenty-one who are not *sui juris* (sects. 18, 19), and a marriage is void if celebrated between persons who are within the prohibited degrees of consanguinity or affinity according to the law of England (sect. 49). These degrees were altered in 1907 (Ord. No. 4) by legalising marriage with a deceased wife's sister.

Provision is made for appointing marriage officers, *i.e.*, (1) registrars of marriages including ordinarily magistrates in their districts, and (2) ministers of religion (sects. 4—13).

It is a condition precedent to solemnization that the parties should have obtained:—

- (1) The certificate or certificates of a marriage registrar after declaration, notice and publication of the intention to marry;
- (2) The certificate of a marriage officer after notice and declaration, and publication of banns in a prescribed form during public Divine service during morning or evening service on three Sundays, or in the case of Jews, three Saturdays.
- (3) The licence of the Governor, or the heads of religious denominations approved by him (sect. 17).

The marriage must be solemnized within three months after the issue of the certificate or licence in the presence of the marriage officer and of two credible witnesses and between 6 a.m. and 8 p.m. after production of the certificate or licence. The ceremony must include a declaration of no impediment, and an expressed consent by each party to take the other as lawful spouse (sect. 21).

Marriage may be solemnized before a registrar in his office between 10 a.m. and 4 p.m. without religious service, but with the declaration and consent above stated (sect. 22). A religious ceremony may be superadded (sect. 23).

A marriage is void if both parties wilfully and knowingly acquiesce in its solemnization—

- (a) Before a person who is not a marriage officer;
- (b) Otherwise than in the presence of two witnesses besides the officer who solemnizes or registers the marriage (sect. 2);
- (c) Or without the authority of banns, licence, &c. (sects. 14, 49).

Clinical marriages.—A marriage officer, without complying with the general

(*f*) See Proclamations of 19th December, 1764, and 10th January, 1784 (Laws of Grenada (ed. 1897, p. 964; and 1 Journ. Comp. Leg. Soc. (1897), p. 151, Hutchinson, C. J.).

(*g*) Which repeals Act No. 12 (of 1841) and Act No. 146 (of 1875), printed in the Laws of Grenada (ed. of 1897), at pp. 945, 949.

(*h*) *Vide ante*, pp. 53, 119, 126.

rules as to ordinary marriages may celebrate marriage between two persons who have lived in unlawful connection and one of whom is *in articulo mortis*. Two witnesses must be present and the parties must be able to express their consent, and if minors must have the consent of parents, &c.

Such marriages are specially registered and do not operate as revocation of a will (sect. 29).

Full provision is made for registration of marriages solemnized in the island, and certain irregular duplicate registers were validated in 1905 (Ord. No. 11).

JAMAICA.

By the Jamaica Act 1 Geo. 2, c. 1, s. 22, all such laws and statutes of England as have at any time been esteemed, introduced and accepted or received as laws of the island shall be laws of the island for ever, *i.e.*, till changed by competent authority (*i*).

The chief legislation of the island as to the civil contract of marriage is contained in Law 25 of 1897 (*k*), as amended by Law 26 of 1899 and Law 28 of 1905.

There is also a Foreign Marriage Law (8 of 1904) (*l*).

The Law of 1897, which extends to the Cayman Islands, with certain qualifications (*u*), does not specifically deal with capacity or impediments, but provides the procedure for obtaining or dispensing with the consents needed for the marriage of persons under twenty-one who are not *sui juris* (sects. 26—7), and for adjudicating upon objections to a marriage (sect. 27).

The island laws provide for the appointment of—

- (a) Civil registrars of marriages (1897, ss. 5, 8; 1899, Law 26, ss. 1, 2);
- (b) Ministers of religion to be marriage officers (1897, ss. 8—18); but they are not bound to act with reference to a marriage contrary to the rules of their denomination (sect. 11).

A civil registrar is also *ex officio* a marriage officer (1899, s. 3), but may celebrate marriage only as prescribed by sect. 30 of the Law of 1897.

A necessary preliminary to marriage is to obtain—

- (1) The certificate of a civil registrar; or
- (2) The certificate of a marriage officer; or
- (3) A licence from the governor (1897, s. 25); or
- (4) A licence issued by any justice of the peace or by the clerk of the resident magistrate's court for the parish in which one or both of the parties reside, or any person appointed for the purpose by the governor (1905, s. 7).

Marriages may be celebrated by a civil registrar after certificate and licence duly granted in the presence of two witnesses with open doors between 6 a.m. and 8 p.m. (1897, s. 30, as amended by 1899, s. 4).

The civil registrar's certificate is obtained after the giving and due publication for seven days of a written notice in a prescribed form of intention to marry, and is issued if no objection has been taken (sect. 21).

A marriage officer's certificate is obtained after giving in the prescribed form to the minister being a marriage officer of the congregation or parish to which one of the parties belongs, and after due publication of the banns of marriage or such notice (1897, s. 23).

The publication of banns is to be made by a marriage officer or minister of a religion expressly authorised by him (sect. 24) in an audible manner some time during public Divine service on Sunday (or in the case of Jews, Saturday) during the morning service if any, or, if none, during evening service.

(*i*) See 1 Journ. Comp. Leg. Soc. (1897) 161, Lumb, A. C. J. The Spanish law was superseded on the British Conquest in 1655.

(*k*) This law repeals, with the necessary savings, Laws 15 (of 1879), 11 (of 1880), 16 (of 1893), and 3 (of 1896).

(*l*) Passed to give effect to the Foreign Marriages Order in Council, 1903 (*ante*, p. 126).

(*u*) Law 23 of 1909.

Under the Law of 1897 publication on three Sundays was required. By Law 28 of 1905 this provision was repealed, and the minister, if a marriage officer, was required to set up at the principal door of the church a statement of the particulars of the marriage notice. After this has been done for seven clear days the required publication of banns is to be deemed complete (1905, ss. 3—6).

Special licences are obtained by application to the governor or other competent officer on proof that there is no impediment, and that the necessary consents, if any, have been given (1897, s. 25; 1905, s. 7).

Marriages may be solemnized under any certificate or licence by a marriage officer in the presence of two witnesses between 6 a.m. and 8 p.m. at any place with open doors, according to such form and ceremony as the parties choose to adopt, provided that before or during the ceremony the parties make a declaration of no impediment and each consent to take the other in marriage (sect. 29).

A civil registrar may solemnize a marriage after certificate or licence duly granted in the presence of two witnesses with open doors between 6 a.m. and 8 p.m. (1897, s. 30; 1899, s. 4). The ceremony need not be at his office. The declaration of no impediment and of consent must be used. No religious service may be used (1897, s. 30), but the ceremony may be followed by a separate religious service in church on production of the registrar's certificate (sect. 31).

Marriages under the law are not void for non-compliance with the conditions of the law, unless the parties have knowingly and wilfully acquiesced in celebration before a person who is not a marriage officer or without the presence of two witnesses besides the officer who solemnizes or witnesses and registers the marriage (sects. 6, 7).

Marriage without certificate of notice or banns may be celebrated under specified conditions between two persons, one of whom is *in articulo mortis*. The conditions are the same as in Grenada (*ante*, p. 269), but there is not the same provision against revocation of wills by such marriage (sect. 39).

Full provision is made as to registration of marriage by civil registrars and marriage officers (sects. 44—59).

LEEWARD ISLANDS.

1. Federal Legislature.

By an Act dated 20th June, 1705 (No. 31), s. 2 (*m*), it is declared that “the common law of England, as far as it stands unaltered by any written laws of these islands, or some of them, confirmed by your Majesty or some of your royal predecessors in Council, or by some Act or Acts of Parliament of the Kingdom of England extending to these islands, is in force in each of these your Majesty's Carribee Islands, and is the certain rule whereby the rights and properties of your Majesty's good subjects inhabiting these islands are and ought to be determined.”

By 36 & 37 Vict. c. 107, s. 10, the general legislature of the Leeward Islands have power to make laws for all the islands or any part of them on the following subjects:—

3. The law relating to husband and wife, parent and child, marriage and divorce, and guardianship of infants.

By sect. 11 the presidency legislature may legislate on the above subjects, but not so as to override general legislation, and local enactments passed under this section may be repealed or altered by the general legislature.

Matrimonial jurisdiction.—Under the Supreme Court Act (No. 2) of 1880 the Supreme Court has jurisdiction in divorce and matrimonial proceedings (sect. 35 (4)), which is exercised in accordance with the law and practice *for the time being* in force in England (Act No. 7 of 1906, s. 3).

Canonical hours.—By Act No. 5 of 1882 any minister of the Christian religion may solemnize at any time between 8 a.m. and 8 p.m. any marriage

(*m*) Act of the General Assembly of the Leeward Islands. It passed no Acts between 1705 and 1798 (Clarke, Colonial Law, p. 126, n.).

which before 16th June, 1882, could have been celebrated by him between 8 a.m. and 12 noon.

2. Local Legislatures.

(a) Antigua, Redondo and Barbuda (*n*).

The law of these islands is the common law of England as modified by federal and island legislation.

The Laws Revision Act, 1892 (No. 9), enumerates in Sched. 2 the only enactments of the island legislature then (*o*) (14th April, 1892) in force in the presidency of Antigua. These include the following Ordinances as to marriage:—1844, Act No. 89 (to declare the legality of marriages performed by other ministers than those of the Established Church and for the due registration of the same); and 1870, Act No. 15 (for registering marriages, births and deaths; amended 1872, No. 4, and 1880, No. 4).

Prohibited degrees.—The Act of 1844 recognizes “the degrees of consanguinity or affinity prohibited by the ecclesiastical or canon law.”

Celebration.—Until 1844 marriages by ministers of the Church of England (until 1873 established in the island) were alone lawful.

The Act of 1844 declared legal, valid and effectual, marriages celebrated by ministers of the Christian religion, viz., of the United Brethren, the Wesleyan Methodists and the Presbyterian Church, according to the particular form or ceremony adopted by the religious body (sect. 2), subject to the provisions of the Act.

Sect. 3 provides for licences by the governor of places of religious worship for the solemnization of banns, and for the publication of banns in such licensed places, on three successive Sundays during the morning (or evening) service.

It also authorises ministers on receiving a certificate of due publication of banns to solemnize marriage between 8 a.m. and 8 p.m. (*p*) according to the forms and ceremonies of the persuasion to which the officiating minister belongs. If the Church of England service is not used, the parties must make a prescribed declaration of no impediment and of consent to marry each other.

Licences in lieu of banns may be issued (1) to clergy of the (then) Established Church; (2) to dissenting ministers of the persuasions already named, authorising them to marry the parties in any licensed place of worship (sect. 6).

All marriages must be solemnized in the presence of two witnesses besides the officiating minister, and must be registered. Provision is made for certifying whether the marriage is by banns or licence, and whether in the case of persons under age and not *sui juris* the necessary consents have been given (sect. 8). A registrar of marriages is constituted, and further provisions as to registration are made by Acts of 1870 (No. 15), amended in 1872 (No. 4), and 1880 (No. 4).

(b) Dominica.

The laws of England, as of 7th October, 1763, were declared in force in the island on its cession by the Treaty of Paris (*q*). It is also subject to the federal Acts stated *ante*, p. 271, and to an island ordinance of 1837 (No. 51), authorising Wesleyan missionaries in the island to celebrate marriage, and providing for registration.

(c) Montserrat.

This colony, first planted in 1632, after sundry conquests and reconquests became finally a British possession in 1784.

Its marriage law is based on the law of England, varied by the federal enact-

(*n*) The laws of Antigua were extended to Barbuda by Act No. 139 (of 1858), confirmed under 22 & 23 Vict. c. 13 (Imp.).

(*o*) Laws of Antigua, 1668—1864, p. 235, amended in certain details by 1894, No. 5.

(*p*) Substituted for 12 noon by Federal Act (No. 5) of 1882 (*ante*, p. 271).

(*q*) The island was acquired by conquest in 1756. See Journ. Comp. Leg. Soc. (O. S.), vol. ii. p. 110, Stoker, Att.-Gen.; and for the proclamation, Laws of Dominica, 1765—1818.

ments stated *ante*, p. 271, and by island laws. The only island laws passed before 1892 which are still in force are those of 1839 (22nd April) and 1867 (6th May) (*r*).

The editors have been unable to obtain access to a copy of the law of 1839.

The Ordinance of 1867 (*s*) requires that in all cases of regular marriage the minister solemnizing the marriage (or the person solemnizing according to the rites, &c. of the Jews or Quakers) shall fill up a certificate to be signed by the parties to the marriage, and by witnesses, male and female, present thereat, not being less than two, and by the officiant. The certificate is delivered to the parties married, who are bound within three days to send it to the civil registrar of the district, who, on receipt thereof, forthwith enters the particulars in his register (sects. 21, 37).

It is an offence to make false statements as to any particular required to be registered (sect. 32).

(d) St. Kitts, Nevis and Anguilla.

St. Kitts finally became a British possession in 1783. Nevis was planted in 1628, and has been continuously British. The three islands were united into a single presidency in 1871. Prior to that date St. Kitts and Nevis had separate legislatures. Anguilla has long been a dependency of St. Kitts.

The marriage law of the islands rests—

- (1) on the English law;
- (2) on the federal laws stated *ante*, p. 271;
- (3) on the separate legislation of each island before union as a single presidency, as revised in 1892; and
- (4) on the ordinances of the presidency legislature.

Marriages by the rites of the Church of England appear to be governed by the common law and the Acts of Henry VIII. and Elizabeth, and by the canons and rubrics, without the aid of any island legislation.

In St. Kitts Ordinance No. 57 (13th November, 1843) regulates the marriage of persons separating or dissenting from the Established Church. The marriage is by banns or licence.

Ordinance No. 63 (16th January, 1845) deals with clandestine marriages. It requires notice to the minister before banns, and prescribes the mode of publishing banns. It also requires that solemnization, whether under banns or licence, shall be in the proper parish church.

Licences for marriage are issued by the Secretary of the island.

The marriage hours under both Acts are between eight a.m. and twelve noon, and the marriage must be in the presence of two credible witnesses besides the officiant.

In Nevis Ordinance No. 39 (*t*) (of 1840) regulates the marriage of Christians separated or dissenting from the Established Church. The rules as to capacity, impediments and consents are the same as for marriages according to the rubrics and ceremonies of the Established Church (sect. 4). The marriages may be celebrated in any chapel duly licensed for marriage, with open doors, between eight a.m. and twelve noon, in the presence of two or more credible witnesses, by a duly ordained or appointed minister of any religious society or denomination of Christians in Great Britain or Ireland, after due publication of banns or licence granted by the proper officer of the island (sects. 1, 2, 3, 7).

The marriage is at once registered (sect. 6).

The registration of marriages is regulated as to all three islands by Ordinance No. 2 of 1885.

(*r*) Declared in force by an ordinance of 1892 (No. 4), Sched. 2. There were older enactments (1678, No. 29) legitimising children born of persons married before a justice of the peace, and forbidding marriage except after due publication of banns, or by licence (1739, No. 120). See Laws of Montserrat (ed. 1740).

(*s*) This repeals an earlier ordinance of 1861.

(*t*) Laws of Nevis (ed. 1862), p. 141 (declared still in force by Ordinances No. 12 of 1892 and No. 16 of 1894). It validates certain Wesleyan marriages solemnized before its passing (sects. 9, 10).

(e) Virgin Islands.

There is said to be an ordinance of July 19, 1839; but no copy is accessible in England.

Ord. No. 4 of 1907 consolidates and amends the ordinances for the registration of marriages (births and deaths). In the case of regular marriages, the minister solemnizing the marriage (or the person solemnizing the marriage according to the rites and forms respectively observed by Jews and Quakers) is required to fill up a certificate in a prescribed form, which is to be signed by the parties contracting the marriage and by the witnesses, male and female, present thereat, not being less than two, and by the officiant. The certificate, when completed, is delivered to the contracting parties, who are bound under penalty to send or deliver it, within three days, to the registrar of the district (sect. 27).

ST. LUCIA.

This colony, though acquired from France by conquest and cession, appears to be governed by the common law of England, so far as the island codes and ordinances are silent (*u*). The codes incorporate much French law. For the purposes of the Colonial Statutes Evidence Act, 1907 (7 Edw. 7, c. 16), the Civil Code (print of 1879) and the Revised Laws (print of 1889) are to be deemed to have been printed by the Government printer (*x*).

There is a Foreign Marriage Ordinance, No. 8 of 1904 (*y*).

Part I., Book V., of the Civil Code of 1876 (*z*) contains most of the marriage law of the island.

Sects. 81—93 as to conditions necessary for contracting marriage are in the main a transcript of the Quebec Code, Arts. 115—127 (*ante*, pp. 256, 257). They vary from it in not requiring a tutor in the case of a minor who is a bastard, and by providing for application to a judge when a person whose consent is necessary is insane, absent, or ill, or incapable of consenting or refuses consent (sect. 89).

The prohibited degrees (sects. 90, 91, 92) within which a marriage is void (sect. 93) are the same as in Quebec before the amendment made by the Dominion Legislature (*ante*, p. 246), except that marriage is prohibited not only between uncle and niece, aunt and nephew, but also between persons connected in the same degree by marriage (sect. 92).

The St. Lucia Code does not contain the provisions of the Quebec Code keeping up impediments recognized by different religious persuasions or recognizing ecclesiastical dispensations, except so far as to entitle ministers of religion to refuse to marry in certain cases.

All status officers, whether religious or civil, are competent to celebrate marriage.

The religious status officers include the curé of each Roman Catholic parish, the minister of each Anglican congregation, and all other ministers of religion authorised by the Governor to celebrate marriage (sect. 26).

If the officer is a minister of religion, he cannot be compelled to celebrate a marriage to which any impediment exists according to the doctrines or discipline of his religious community (sect. 94) (*a*).

Marriage may be celebrated (1) by a licence of the Governor; (2) after publication of banns in the case of a religious marriage; (3) after the publication of notice in the case of a civil marriage (sect. 95); or, if the minister does not object, in case of religious marriage (sect. 101).

The licence or a certificate of banns or notice must be produced before celebration (sect. 103).

(*u*) Before 1872 the *Coûtume de Paris* was followed (1 Journ. Comp. Leg. Soc. (1896), p. 175, Child, C. J.).

(*x*) Ordinance No. 3 of 1909.

(*y*) It gives effect to the Foreign Marriages Order in Council, 1903 (*ante*, p. 126).

(*z*) Proclaimed 8th October, 1877. It appears to supersede the Order in Council of 7th September, 1838 (*post*, p. 286, *n.*).

(*a*) *E.g.*, impediments created by vows of celibacy, &c.

1. The licence is only granted on affidavit by a party as to the true names, absence of impediments, and that consent has been given in the case of a minor (sect. 96).

2. The banns specify the names, &c. of the parties, and of their parents, and if the woman has been married before, of her former husband (*b*). They are published during divine service in a church in each ecclesiastical parish in which the parties are resident three times within two months, at intervals of not less than one week, or if service is not held weekly, on the two successive days (not being within a week of each other) on which service is performed after the first publication (sects. 98, 99).

3. The civil notice contains the same information as the banns, and is published in the Court room of the magistrate of each district in which the parties reside. Three publications are needed, as in the case of banns, and the notice, which is in writing, is exhibited for fifteen days in the Court room.

The ceremony must take place between sunrise and sunset (sect. 106). No place is prescribed for the marriage. The ceremony is in the form prescribed by the religion of the celebrating officer (sect. 108).

The minister must make up the record of marriage as prescribed by sects. 42, 43.

Civil marriage is contracted before a status officer in the presence of at least two adult witnesses by declaration of no impediment, and acceptance of each other for wife or husband, and signing the record of marriage (sects. 108, 109).

The district registrar is the status officer, and must register the marriage (Ord. 1879, No. 51, s. 11).

A marriage celebrated outside the colony between persons both of whom are, or afterwards become, subject to its laws, if valid by the *lex loci contractus*, is treated as valid in the colony, unless the parties went to the *locus* to evade the law of the colony (Civil Code, s. 111).

The Code contains a chapter on oppositions to marriage (sects. 113—122), corresponding closely to the Quebec Code (sects. 136—147, *ante*, p. 258), and agrees with it in bringing in the *conseil de famille*. But in the case of an adult who is insane, any person may oppose the marriage (sects. 117, 118).

Marriage *in extremis* without the formalities prescribed by the Code has no legal effect (sect. 112).

To establish the title of husband or wife, or to claim the civil effect of marriage, it is essential in most cases to produce a certificate of the marriage (sects. 35, 129—132).

Divorce and nullity.]—There is no divorce (sect. 155); but a marriage may be impugned and annulled (1) for consanguinity or affinity; (2) lack of free consent of one party; (3) error of one party as to the identity of the other; (4) insanity of one party at the date of marriage; (5) incompetence of the celebrant (sect. 123); (6) non-publication of banns or notice.

Limitations and conditions are imposed as to applications to annul (sects. 124—128), and as to the effect of annulment (sects. 133, 134).

Legitimation.]—Children born out of wedlock, unless they are the issue of an incestuous or adulterous connection, are legitimated by the subsequent marriage of their parents (sect. 205), and acquire the same rights as if born in wedlock (sect. 207). The right enures in favour of the lawful issue of deceased illegitimate children (sect. 206).

ST. VINCENT.

This colony is under the English common law as of 1763 as modified by local legislation (*c*).

The Foreign Marriages Ordinance, 1904 (No. 4), gives effect to the Foreign Marriages Order in Council, 1903 (*ante*, p. 126).

(*b*) Cf. Quebec Code, sect. 58 (*ante*, p. 255).

(*c*) Proclamation, 7th October, 1763 (1 Journ. Comp. Leg. Soc. (1897), p. 177).

The Marriage Ordinance, 1909 (No. 3), consolidates and amends the laws relating to marriage (*d*).

Impediments.]—The table of consanguinity and affinity is the same as in England (sect. 51), marriages with a deceased wife's sister being legalized by sect. 2.

Celebration.]—Marriages in the island have no legal effect unless solemnized in accordance with the ordinance (sect. 3), subject to the following provisions:—

A marriage otherwise lawful which has been actually solemnized cannot be declared void because any of the conditions directed to be observed have not been observed except in cases within—

- (i) Sect. 31. Marriages *in articulo mortis*; and
- (ii) Sect. 51—(a) Marriages knowingly and wilfully contracted without the authority required by sect. 16, *i.e.*, certificates or licences, or under sect. 31;
- (b) Marriages within the prohibited degrees of consanguinity or affinity.

A marriage is void where both parties have knowingly and wilfully acquiesced in solemnization, by or before a person not a marriage officer, or otherwise than in the presence of two witnesses besides the marriage officer (sect. 4).

There is a presumption in favour of the validity of marriages celebrated under the ordinance (sect. 50).

The Governor is empowered to appoint (and remove) registrars of marriage and marriage officers, such ministers of religion and other persons as may be entitled to appointment.

Registrars of marriage are marriage officers *ex officio* (sect. 8).

Ministers of religion, whether acting for one or more congregations, are ordinarily entitled (subject to the power of the Governor to reject) to be marriage officers for the parish or parishes for which they are acting as ministers (sects. 7, 15 (2)).

They are not bound to be marriage officers (sect. 15 (1)), nor to act as marriage officers in respect to a marriage contrary to the rites of the religious society to which they belong (sect. 9).

By sect. 16 marriages may be solemnized under the authority—

- (a) Of the certificate or certificates of one or more marriage officers;
- (b) Of the certificate or certificates of one or more registrars; or
- (c) Under licence from the Governor.

(a) To obtain a marriage officer's certificate each of the parties has to give notice to the minister of his congregation, if any, being a marriage officer, or if he belongs to no congregation, to a minister who is a marriage officer for his parish. The notice is entered in a marriage banns book, and posted for a period extending over three Sundays on the door of the place of worship in which the officer ministers, or (if more than one) of the place where the banns are to be published. The banns are published on three Sundays (or in the case of Jews, three Saturdays), and if no objection has been made a certificate of due publication is given (s. 18).

(b) To obtain the registrar's certificate or certificates, notice must be given by each party to the registrar (or registrars) of the district (or districts) of residence (*e*). When one party resides outside the colony a single notice suffices. The notice is entered in the marriage notice book, and posted on the outer wall of the registrar's office for at least seven days. If no objection is made during this period, the certificate or certificates are issued (sect. 17).

(c) The Governor's licence is issued from the Colonial Secretary's office on the application of one or both parties, and proof, if required, of no impediment, and the giving of any consents required by law. The parties may be required to make a declaration (sect. 19).

(*d*) It repeals Ord. No. 40 of 1841, Ord. No. 14 of 1887, Ord. No. 10 of 1889, and Ord. No. 26 of 1897, except sect. 5.

(*e*) Fifteen clear days' residence is required before date of notice.

Objections to a marriage which do not set forth a legal impediment suspend issue of certificate or licence pending inquiry by the registrar or marriage officer, who decides himself on the objection. Objections which set up a legal impediment are referred to a judge of the Supreme Court (sect. 21).

In the case of persons under twenty-one and not *sui juris*, the same consents are required as in England, subject to the power of a judge of the Supreme Court to dispense with consent where the proper person is incapable of consenting, or unreasonably refuses consent (sect. 20).

A marriage is void unless celebrated within three months after the issue of the certificate or licence authorising it (sect. 22).

The marriage may be solemnized according to such form and ceremony as the parties may see fit to adopt, provided—

- (a) That the marriage must be celebrated by or in the presence of a marriage officer and of two credible witnesses between 6 a.m. and 8 p.m. after production of the certificates or licence.
- (b) That there be no lawful impediment to marriage between the parties; and
- (c) That each party in the presence of the officer and the witnesses makes a declaration of no impediment and of consent to take the other in marriage (sect. 23).

Marriages before a registrar must be in his office between 10 a.m. and 4 p.m. without religious service, but otherwise as above prescribed (sect. 24). Marriage before a registrar may be followed by marriage before a minister of religion on production of the registrar's certificate (sect. 25).

Marriage is allowed without certificate of notice or banns if it is between two persons who have lived in unlawful connection, one of whom is *in articulo mortis*. Both must be able to signify their consent in the presence of two witnesses, and if either is under twenty-one and not *sui juris*, the consents required by law must be given. A marriage under these conditions is valid, but does not revoke a will already made, and must be specially registered (sect. 31).

Registration.—When a marriage has been celebrated the registrar or other marriage officer must obtain and register the necessary particulars (sects. 26, 27, 42, 43, 44).

TRINIDAD AND TOBAGO.

Tobago was ceded by Spain in 1763 and Trinidad was ceded by Spain in 1814, after capture in 1797. The colonies are now under one legislation, and both are under the common law, which has been introduced in Trinidad in gradual supersession of the Spanish law (*f*). The colonial legislation in force is contained in Consolidated Ordinances Nos. 59 (*g*) and 299 (*h*).

Impediments.—The Consolidated Marriage Ordinance (No. 59) provides that marriages within the prohibited degrees of consanguinity and affinity, according to those of the law of England (*ante*, p. 14), are void (sects. 13, 32), and makes provision as to consents to the marriage of persons under twenty-one who are not *sui juris* (sects. 15–19).

Celebration.—Marriage after banns is not allowed. In lieu of banns, a certificate of the district registrar of marriages is necessary (sect. 24). This certificate is obtained after giving to the registrar the prescribed notices and their due publication by him for twenty-one days. The notice must contain a declaration against impediment by consanguinity or alliance (sects. 10, 12).

The Governor can also issue a special licence after notices and affidavits in forms prescribed (sect. 14).

(*f*) See 2 Journ. Comp. Leg. Soc. (1897) 293, 318.

(*g*) Laws of Trinidad and Tobago, vol. ii. p. 40. It consolidates—1863, No. 11; 1864, No. 1; 1864, No. 12; 1865, No. 13; and 1893, No. 17; and appears to supersede the Order in Council of 7th September, 1838 (*post*, p. 286, *n.*).

(*h*) Giving effect to the Foreign Marriages Order in Council, 1903 (*ante*, p. 126), and re-enacting 1904, No. 24. See Laws of Trinidad, vol. v. p. 510.

A marriage may be celebrated after three months from notice to the registrar (sect. 23).

Marriage may be celebrated (1) before the registrar (sect. 22); (2) by a minister officiating in the registered place of religious worship specified in the registrar's certificate in lieu of banns (sect. 20).

The hours for marriage are between 7 a.m. and 5 p.m. The celebration must be with open doors, in the presence of two or more credible witnesses, besides the officiating minister or registrar.

In the case of a civil marriage, or of a marriage not solemnized by the rites of the Church of England or of Rome, the parties must, in some part of the ceremony, make a declaration of no impediment, and of consent to take each other in marriage (sects. 20, 21).

The language of these declarations may be that commonly used by the parties, provided that it clearly expresses the true meaning of the declarations (sect. 21).

Ministers of religion are not bound to marry persons either of whom do not belong to their communion, nor to marry otherwise than according to the rites and customs of their communion, nor unless satisfied by the declaration of the parties that the marriage is consistent with such rites and customs (sect. 26).

Registration.]—The ordinance provides for registration by the officiating minister and sending at once a duplicate to the district registrar, and for registration by the district registrar of marriages before him and the duplicates received from ministers (sects. 27, 29).

Clinical marriage.]—Marriage *in extremis* may be solemnized by ministers of religion without compliance with the rules as to notice, &c. between two persons who are of full age and legally competent to contract marriage, and one of whom is certified by a doctor or believed by the minister to be in a dying state at the time of celebration. The ceremony has not the effect of creating a marriage civilly valid; but if the celebration is properly notified or certified by the minister, he escapes the penalties of felony imposed by the ordinance for illegal celebration (sect. 41).

Legitimation *per subsequens matrimonium* was recognized until 1845 (*q*).

TURKS AND CAICOS ISLANDS.

The statute law of these islands is derived from three sources:—

- (1) Legislation of the Bahamas, to which they were attached until 1848;
- (2) Legislation of Jamaica, to which they were attached in 1873; and
- (3) Island legislation, there being still a legislative board for the islands.

1. The Bahamas legislation in force is (a) 40 Geo. 3, c. 2 (*r*), which extends to the Bahamas and Turks Islands the law of England, including 32 Hen. 8, c. 38 (*ante*, p. 63), when not altered by the scheduled Acts or local legislation; (b) 2 Vict. c. 31, of the Bahamas (*s*).

2. The Jamaica legislation in force is Law 14 of 1879 (*t*) (Divorce and Nullity), and Law 27 of 1881 (*u*).

3. The island ordinances in force are—1862, No. 4 (*x*), registration; 1873, No. 10 (*y*), marriage officers; and 1900, No. 3, validation (*z*).

(*q*) See *Escallier v. Escallier*, 10 App. Cas. 212.

(*r*) *Ante*, p. 261, note (*l*).

(*s*) *Turks Islands Revised Laws* (ed. 1908), p. 31.

(*t*) *Ibid.* p. 762.

(*u*) *Ibid.* p. 772.

(*x*) *Ibid.* p. 119.

(*y*) *Ibid.* p. 154.

(*z*) *Ibid.* p. 543.

WEST AFRICAN POSSESSIONS AND PROTECTORATES.

GAMBIA.

The common law of the colony is the common law of England (*a*). The law of the colony extends also to the Gambia Protectorate (*b*).

Christians and Jews.]—Marriage may be celebrated (after publication of banns) in places of worship specified in or licensed under an ordinance (No. 9 of 1862) (*c*) by a minister of the church where the banns are published. The service, if not according to the Anglican rule, must include a declaration of no impediment, and a declaration by each party of consent to marry the other. Marriage may also be by the Governor's licence in lieu of banns (*d*). The celebration must be with open doors and between 8 a.m. and 12 noon, and immediately on celebration the marriage must be registered in the prescribed manner (*e*). There is no legislation altering the prohibited degrees or the general English law as to capacity and consents.

Jews and Quakers may be married according to their own usages by licence from the Governor (*e*).

Mohammedans.]—An ordinance of 1905 (No. 10) recognizes a marriage between Mohammedan natives duly contracted in accordance with Mohammedan law (*f*), as valid and effectual for the purpose of establishing the status of legitimacy in the colony in favour of the children of the marriage (*g*). The ordinance also establishes a Mohammedan Court having jurisdiction *inter alia* between Mohammedans in civil matters relating to marriage (*h*).

GOLD COAST.

The law of this Possession is based on the English common law, equity, and statutes of general application as of 24th July, 1874, and in suits between natives on native law and custom (*i*), when not repugnant to natural justice, equity, and good conscience, or any local ordinance. An ordinance of 1903 (No. 6) gives effect to the Foreign Marriages Order in Council, 1903 (*k*).

There are three distinct areas under the Governor:—(1) The colony proper; (2) Ashanti (*l*); (3) the Northern Territories.

Christians, &c.]—1. Christian and civil marriage in the colony is governed by Ordinance of 1884 (No. 14) (*m*), as amended in 1895 (No. 3) and 1909 (Nos. 2 and 6).

The ordinances provide for the division of the colony into marriage districts (*n*), the appointment of registrars of marriages (*o*), the licensing of places of worship for celebration of marriage (*p*), and the appointment of ministers of religion as marriage officers (*q*).

(*a*) Journ. Comp. Leg. Soc. (O. S.) vol. i. (1896) p. 378, Maxwell, C. J.

(*b*) Gambia Protectorate Ordinance, 1894 (No. 11).

(*c*) Gambia Revised Ordinances, vol. i. p. 28. Sect. 15.

(*d*) 1862, sects. 7—11.

(*e*) *Ibid.* sect. 23.

(*f*) *Vide post*, pp. 280, 298, 299.

(*g*) Sect. 1.

(*h*) *Ibid.* sects. 2, 4. The ordinance of 1862 also validates certain prior marriages whose legality had been in doubt (sect. 1); and also certain *de facto* marriages between natives (sect. 22).

(*i*) Ord. No. 4 of 1876, s. 14; Journ. Comp. Leg. Soc. vol. i. (1897) p. 146, W. B. Griffiths, C. J.; and see Comments on Gold Coast Ordinances, by Redwar and Sarbah (London, 1909); and Fanti Customs, by Sarbah (1897).

(*k*) *Ante*, p. 126.

(*l*) See Ashanti Ord. No. 1 of 1902; Ord. No. 10 of 1910.

(*m*) Gold Coast Ordinances, vol. i. p. 434.

(*n*) 1884, sect. 3.

(*o*) *Ibid.* sects. 4, 5.

(*p*) *Ibid.* sect. 6.

(*q*) *Ibid.*, 1909, s. 5A.

Marriage may be solemnized under (1) a registrar's certificate ; (2) marriage officer's certificates ; (3) a special licence from the Governor (*r*).

The ordinances prescribe the notices and declarations necessary to obtain these certificates and licences (*s*), and make full provisions as to consent of parents and *caveats*.

A marriage may be celebrated in licensed places of worship, with open doors, between 8 a.m. and 6 p.m. by a recognized minister in the presence of two or more witnesses (*t*), and a marriage may be celebrated by a registrar of marriages in his office, between 10 a.m. and 4 p.m., in the presence of two or more witnesses, and in accordance with a prescribed form, in which the nature and effect of the ceremony is explained, and the parties are told that the marriage is indissoluble except by death or divorce, and warned of the penalties of bigamy (*u*). Under a Governor's licence the celebration may be at the time and place specified therein (sect. 29).

A child born before the intermarriage of his parents under the ordinance, and not procreated in adultery, shall on such intermarriage be deemed the lawful issue of a marriage under the ordinance. Adultery does not include the intercourse of a man married by native customary law with an unmarried woman (*x*).

Mohammedans.]—The registration of Mohammedan marriages and divorces is provided for by Ordinance No. 21 of 1907, and marriages contracted or divorces effected in the colony after 4th February, 1908, are not to be valid unless registered. Succession to a Mohammedan whose marriage is registered is regulated by Mohammedan law.

Pagan Natives.]—Marriage by native custom between natives who are not Christian or Mohammedan is not affected by the ordinances above stated, and does not bring the parties under the rules of the English law as to married persons (*y*).

But when a person subject to native law or custom contracts a marriage within or without the colony in accordance with the provisions of the ordinance, or of any other enactment relating to marriage . . . certain prescribed conditions as to succession to property attach to the marriage, and before a registrar or marriage officer issues a certificate for marriage, he is bound to explain to the parties the consequences of marriage under the Ordinance, 1909, s. 15 (repealing 1884, s. 39).

LAGOS. See SOUTHERN NIGERIA.

NORTHERN NIGERIA.

The marriage law of this Protectorate is regulated by a proclamation (No. 1 of 1907), except as to marriages contracted under or in accordance with any native law or custom (*z*). But a subsisting marriage under the proclamation is a bar to marriage under native law (*a*).

Impediments.]—The prohibited degrees are the same as in England, except that a man may marry the sister or niece of his deceased wife. A subsisting marriage under native law or custom is a bar to marriage under the proclamation to any person other than the person with whom the native marriage has been had (*b*).

Certificates and licences.]—Marriage by banns is not in use. Persons seeking to

(*r*) 1909, s. 6A.

(*s*) 1884, ss. 7—12 ; 1909, ss. 4—9.

(*t*) 1884, ss. 21, 23, as amended, 1909, s. 11.

(*u*) *Ibid.* s. 27.

(*x*) Sect. 39A ; 1909, s. 16.

(*y*) *Cole v. Cole* (1898), reported in Redwar and Sarbah, p. 201. And see Sarbah, Fanti Customs.

(*z*) The proclamation validates certain prior religious marriages (sect. 34).

(*a*) Sect. 33.

(*b*) Sect. 31.

marry must obtain the certificate of a deputy registrar of marriages or a licence from the High Commissioner (*c*).

Where either party is under twenty-one and not *sui juris*, the written consent of the father or other guardian is necessary unless dispensed with by the proper authority (sects. 16—18).

Celebration.—1. The High Commissioner may license any place of public worship for the celebration of marriages (*d*). In such licensed places, a marriage may be celebrated by any recognized minister of the church or denomination to which the place belongs, according to the rules or usages of the church or denomination (*e*).

The marriage must be celebrated between 8 a.m. and 6 p.m. with open doors in the presence of two or more witnesses besides the officiating minister (*f*).

The minister may not celebrate a marriage if he knows of any just impediment nor until there is produced to him the deputy registrar's certificate or the High Commissioner's licence (*g*).

2. Marriage may also be celebrated in a deputy registrar's office between 10 a.m. and 4 p.m. with open doors in the presence of two witnesses.

The formula prescribed, contains a warning by the registrar that the ceremony before him constitutes a valid marriage, and not dissoluble except by death or divorce, and that if either party contract another marriage while that to be celebrated subsists, he or she will be guilty of bigamy (*h*).

3. Marriage may not be celebrated in any other place except under the High Commissioner's licence (*i*).

A marriage is void if both parties knowingly and wilfully acquiesce in its celebration --

- (a) In any place but a licensed church, or a deputy registrar's office (except under special licence); or
- (b) Under a false name or names; or
- (c) Without a deputy registrar's certificate or licence duly issued; or
- (d) Before a person who is not a recognized minister of some religious denomination, or a deputy registrar (*k*).

The marriage is registered immediately in duplicate on celebration by the officiating minister or registrar (*l*). One copy is given to the parties; the other, if by a minister, is sent to the registrar (*m*). A register of marriage certificates is kept, copies whereof are evidence (*n*). Provision is made for ensuring that persons giving marriage notices who do not know English shall have the terms of marriage notices, &c. fully explained to them (*o*).

Natives.—When *both* parties to a proposed marriage are natives of Northern Nigeria the registrar is required to ascertain that they have been professed Christians or members of a recognized Christian church for at least six months before the registrar's certificate issues (*p*).

The successor to real or personal property of a person whose marriage is celebrated or validated by the Act, and who is subject to native law or custom, is regulated by that law or custom and not by English law (*q*).

(*c*) 1907, sects. 5—15.

(*d*) Sect. 4.

(*e*) Sects. 19—21.

(*f*) Sect. 19.

(*g*) Sect. 20.

(*h*) Sect. 25.

(*i*) Sect. 27.

(*k*) Sect. 31, sub-sects. 41—49, deal with bigamy and contravention of the marriage laws.

(*l*) Sects. 24, 26, 27.

(*m*) Sects. 24, 27.

(*n*) Sects. 28, 30.

(*o*) Sects. 6, 17, 25.

(*p*) Sect. 9 (*e*).

(*q*) Sect. 37. The cross-heading and marginal note to the section treat it as applying only to succession *ab intestato*. Cf. North-Eastern Rhodesia (*post*, p. 296).

ST. HELENA.

This colony was taken over by the Crown from the East India Company in 1834. The law of the colony is that of England *for the time being*, so far as applicable to local circumstances, modified by such laws of the East India Company (made before 1834) as survive, and by local ordinances, and by Orders in Council (*r*).

The *local* ordinances regulating marriage are No. 3 of 1851, which provides for solemnization in places registered for marriages, and No. 4 of 1886, which requires persons giving notice for marriage under the ordinance of 1851 to make a solemn declaration (1) of no impediment of kindred or alliance, (2) that neither party is a minor, or if either party is a minor, that the necessary consents have been obtained.

Marriages may be solemnized between 8 a.m. and 6 p.m. (*s*).

The Supreme Court has divorce jurisdiction under an Order in Council of 1st May, 1890, proclaimed in the island on 14th July, 1891. The jurisdiction extends only to marriages solemnized in the island of whom one at least was domiciled in the island at the date of the marriage, and to cases in which the petitioner is resident in the island at the date of petition. Ordinance No. 6 of 1903 provides for marriage under the Foreign Marriages Order, 1903 (*ante*, p. 126).

SIERRA LEONE (COLONY AND PROTECTORATE).

The colony is governed by the common law of England as of 1799 (or 1808), as modified by subsequent local legislation (*t*).

Christian marriages.]—The law as to Christian marriages in the colony and protectorate was consolidated and amended in 1906 (*u*).

Impediments.]—The prohibited degrees of kindred and alliance are those of the law of England (*x*), and the rule as to consents to the marriage of minors is in substance the same (sects. 6 (2), 7); but a marriage without the prescribed consents is valid (sect. 9).

Notices.]—Marriage may be by banns, or if neither party is a native, by licence of the governor or district commissioners (sects. 2, 5).

Banns must be published on three successive Sundays at a public place of worship in the town or place where the parties reside.

A copy of the notice of banns must be fixed up by the minister inside or outside the church.

Celebration.]—The marriage must be celebrated within three months of the last publication of banns or of the date of the licence, and between 8 a.m. and 3 p.m. in a place of public worship according to the forms and ceremonies of the denomination, and in the presence of at least two witnesses (sects. 8, 9).

Registration.]—Provision is made for registration of the marriage by the minister (sects. 10, 26).

It is not illegal to celebrate a marriage *in articulo mortis*, but such a marriage has no effect on the property of the parties to it (sect. 27).

Natives.]—Where one of the parties to a marriage under the ordinance is a native, the marriage has no effect on the property of the native, but the parties are free to make their own agreements about it. Where both parties are natives, their property is subject in all respects to the laws and customs of the tribe or tribes to which they respectively belong (sect. 25).

The ordinance also deals with offences relating to marriage, with bigamy

(*r*) Ordinance No. 1 of 1868, s. 1. Encyc. Laws England (2nd ed.), vol. xiii. p. 73.

(*s*) Ord. No. 9 of 1888.

(*t*) Journ. Comp. Leg. Soc. (1896) vol. i. p. 181, Clark, A. C. J. As to the Protectorate, see Sierra Leone Revised Ordinances, vol. ii. p. 479.

(*u*) No. 22. *Ibid.* vol. iii. p. 1096.

(*x*) Sect. 6 (1).

(sect. 15), and going through the ceremony of marriage with a person known to be already married (sect. 16). These sections do not apply to marriages in accordance with native law or custom. The ordinance also deals with personation or marriage under a false name or description, with intent to deceive the other party (sect. 19), and going through a fictitious marriage (sect. 20).

Mohammedans.]—A marriage contracted and subsisting between persons professing the Mohammedan faith, and domiciled in the colony or protectorate, if valid by Mohammedan law, is treated as valid in the colony for all civil purposes. Provision is made for registering such marriages and final divorces, and for the devolution of property in accordance with Mohammedan law on the death intestate of a Mohammedan (*y*).

Ordinance No. 23 of 1903 gives effect in the colony to the Foreign Marriage Order in Council, 1903 (*z*).

SOUTHERN NIGERIA.

This term now includes three distinct areas:—(1) The Colony of Lagos; (2) the protected territories attached to Lagos; and (3) Southern Nigeria proper (taken over from the Nigeria Company).

1. *Lagos.*

This colony is subject to the English common law as modified by local ordinances, and subject *sub modo* to native laws and customs (*a*).

The chief ordinance is No. 14 of 1884 (*b*). It applies English marriage law to marriages under the ordinance, but allows marriage with a deceased wife's sister or a deceased wife's niece (sect. 35). A marriage under the ordinance is invalid if either party is already married by native law or custom to any person other than the person with whom the marriage was had (sect. 35).

2. *Protected Territories of Lagos.*

The marriage law of the colony was applied to these territories in 1884 (*c*).

3. *Southern Nigeria.*

Non-Natives.]—Proclamation No. 10 of 1906 amended and consolidated the law of marriage.

It does not apply or affect the validity of native marriages, but a person married under the proclamation, or whose marriage before the proclamation is by the proclamation declared valid, is rendered incapable, while such marriage continues, of contracting a valid marriage under any native law or custom (sect. 37).

For the purposes of the proclamation the prohibited degrees of consanguinity or affinity are the same as under the English Table, *ante*, p. 14, except that a man may marry the sister or the niece of his deceased wife (sect. 35).

Natives.]—A native who seeks to marry under the ordinance must obtain a certificate from the native council stating that he is not subject to the bond of any subsisting marriage (sect. 13).

The proclamation in other respects is substantially the same as in the Colony of Lagos.

The Supreme Court of the Protectorate received by a proclamation of 1900 jurisdiction in divorce proceedings which is (by Proclamation No. 18 of 1903) to be exercised in accordance with the law and practice for the time being in force in England.

(*y*) 1905, No. 20; and 1908, No. 2. Sierra Leone Revised Ordinances, vol. iii. p. 909.

(*z*) *Ante*, p. 126.

(*a*) Supreme Court Ordinance, 1876; 1 Journ. Com. Leg. Soc. (1897), p. 371.

(*b*) Laws of Colony of Southern Nigeria, vol. ii. p. 1051.

(*c*) Ordinance of 1884, s. 2.

SOUTH AFRICA.

Common Law.

The common law of British South Africa (up to the river Zambesi) is the Roman-Dutch law so far as applicable to and accepted in South Africa (*e*). That law was introduced by the Dutch while they held the Cape, and was continued on its conquest and cession to Great Britain (*f*), but has been modified by the Acts, ordinances, laws and proclamations applying to the different provinces, territories and protectorates south of the Zambesi.

In dealing with marriages in South Africa reference is not to be made to the English rules as to consanguinity or affinity, as to capacity to marry, or as to the forms necessary to constitute a valid marriage (*g*).

Age.—A male under fourteen and a female under twelve cannot contract a valid marriage (*h*).

The marriage of persons under twenty-one without the consent of parents is voidable at the suit of the parents, but where (*i*) consent is wrongfully withheld judicial consent can be obtained (*k*).

Sanity.—Insane persons cannot lawfully marry (*l*).

Prohibited degrees.—The Roman-Dutch rules as to prohibited degrees are derived partly from the Roman and partly from the canon law. The Roman law reckons that first cousins are four degrees removed, the canon law reckons that they are two degrees removed. Each law allowed marriage in the fourth degree: with the result that one law allowed the marriage of first cousins, while the other prohibited the marriage of second cousins. This caused confusion with the regulation until the Political Ordinance of 1850 established the prohibited degrees as under:—

- (1) Marriage is prohibited between blood relations who are ascendants and descendants *ad infinitum*, whether the relationship is legitimate or not (*m*). The prohibition extends not only to direct descendants, &c. by blood, but to persons related by affinity in the ascending or descending line (*n*).
- (2) Marriage between brothers and sisters.
- (3) Marriage between uncles and nieces, aunts and nephews (*o*), *ad infinitum*.
- (4) Marriages in affinity within the same degrees as in consanguinity.
- (5) Man and his step-mother, or widow of any of her ascendants; or his daughter-in-law, or the widow of any of her descendants; or his mother-in-law, or any of his deceased wife's ascendants; or his step-daughter, or any of his deceased wife's descendants, in all cases *ad infinitum*, and between a woman and any man coming within the corresponding degrees.
- (6) A man and his brother's widow [or his deceased wife's sister] (*p*), and between a woman and her deceased husband's brother or her sister's widower (both full and half-blood).

(*e*) See *British South Africa Co. v. De Beers Consolidated Mines* (1910), 26 T. L. R. 591, 594, Cozens-Hardy, M. R.; Nathan, Common Law of South Africa.

(*f*) *Seuville v. Colley* (1891), 9 Cape S. C. 39, 44.

(*g*) Nathan, Common Law of South Africa, vol. i. p. 206 *et seq.*; Morice, English and Roman-Dutch Law; Wessels, Hist. Roman-Dutch Law (1908), p. 429.

(*h*) Wessels, 440.

(*i*) *Ibid.* 443. *Solomon v. Hanna* (1903), Transvaal S. C. 460; *Johnson v. Macintyre* (1893), 10 Cape S. C. 894; *Willenburg v. Willenburg* (1898), 25 Cape S. C. 894; (1908), 26 Cape S. C. 447; and see *Lee v. Donlon*, 5 Natal L. R. 270; *Laney v. Laney*, 20 Natal L. R. 94.

(*k*) Nathan, vol. i. pp. 209, 210.

(*l*) See *Prinsloo's Curator v. Crafford* (1905), Transvaal S. C. 669.

(*m*) Nathan, vol. i. p. 215.

(*n*) *Ibid.* p. 214. See *Ex parte Smit* (1903), Orange River Rep. 17, Maasdorp, C. J.

(*o*) Modified in Cape Act, No. 40, 1892 (*post*, p. 286).

(*p*) *Ibid.* s. 2.

- (7) A man and the widow of his brother's or sister's son or other descendant, or his deceased wife's brother's or sister's daughter or other descendant, and between a woman and any man coming within the corresponding degrees.

A marriage may be declared void *ab initio* on the ground of the previous in chastity (*stuprum*), followed by pregnancy, of the wife unknown to the husband, if the husband on discovering her condition has ceased to cohabit, and has not condoned the offence (*q*).

Marriage between an adulterer and the woman with whom he has committed adultery is void (*r*).

Marriage of a widow during the year of mourning was prohibited (*s*). This prohibition is not continued in the Cape, and was formally abolished in the Transvaal in 1901 (*t*).

Legitimatio per subsequens matrimonium is admitted (*u*).

Divorce is admitted for adultery or malicious desertion (*v*).

On the creation of the Union of South Africa the power to legislate on the subject of marriage was vested in the Parliament of the Union as to the original provinces (*i.e.*, Cape Colony, Natal, Orange Free State, and Transvaal) and to added provinces and territories (*x*).

BASUTOLAND.

Basutoland was at one time annexed to the Cape Colony, but was detached from it in 1884 (*xx*). The proclamation of the High Commissioner of South Africa of 29th May, 1884 (*y*), disannexing Basutoland from the Cape Colony, contains the following provisions as to marriages:—

- (1) It shall not be lawful for any person to compel any woman to enter into a contract of marriage, or to marry against her wish.
- (2) Any marriage celebrated by any minister of the Christian religion according to the rites of the same, or by any civil marriage officer duly appointed by the High Commissioner to solemnize marriages, shall be taken to be in all respects as valid and binding, and to have the same effect upon the parties to the same, and their issue and property, as a marriage celebrated under the marriage laws of the Cape Colony.
- (3) It shall be optional for any person hereafter married according to the Basuto custom, to register the fact of such marriages at the office of the resident magistrate for the district in which such marriage was celebrated, or in the office of the resident magistrate [for the district] in which the parties reside, and at the same time to register the dowry or cattle (if any) given in consideration of any such marriage. Provided that such registration shall take place within one month after the celebration of such marriage.
- (4) A registration fee of 2s. 6d. shall be payable for the purposes of government for the registration of all marriages, whether celebrated according to the rites of the Christian religion, before a marriage officer as aforesaid, or according to the custom of the Basutos.

(*q*) *Horak v. Horak* (1860), 3 Searle, Cape, 300.

(*r*) *Rabot v. de Silva*, (1909) A. C. 376, 381; *Daniel v. Daniel* (1884), 3 Cape S. C. 231; Wessels, 448; Nathan, vol. i. p. 213.

(*s*) This prohibition exists in the canon law of the earlier church.

(*t*) Proclamation 34, repealing Law No. 3 of 1871. But see *post*, p. 293, and as to Orange River, *post*, p. 291.

(*u*) Wessels, 472.

(*v*) *Ibid.* 469–471.

(*x*) South Africa Act, 1909 (9 Edw. 7, c. 9), ss. 4, 6, 59, 150.

(*xx*) As to power to place it under the control of the South African Union, see 9 Edw. 7, c. 9, s. 151.

(*y*) As to the powers of legislation by proclamation, see *Sprigg v. Sigean*, (1897) A.C. 238; *Ex parte Sekgomé* (1910), 26 T. L. R. 439 (C. A.).

BECHUANALAND PROTECTORATE.

The territories north of the Motopo River and the formerly separate colony of British Bechuanaland (*z*) (which is now incorporated in the Cape Colony), are governed, under an Order in Council of 30th July, 1891 (*a*), by the High Commissioner of South Africa, who may legislate by proclamation (*b*).

The editors have been unable to trace any proclamation relating to marriage. The Foreign Marriage Act, 1890, applies.

CAPE OF GOOD HOPE.

(*a*) *Original Provinces.*

The Roman-Dutch law applies, subject to the modifications to be stated.

Impediments.]—The forbidden degrees of the Roman-Dutch law, *ante*, p. 284, are altered by Act No. 40 of 1892 (*c*). Under that Act a man may marry (*d*) the sister of his deceased wife (but not of his divorced wife), unless she is the widow of his deceased brother (*e*), and any female related to him in any remote degree of affinity, save and except any ancestor of, or descendant from, his deceased wife. This has the effect of authorising marriage with the niece of a deceased wife, and has been held to authorise marriage between a woman and her nephew by affinity (*d*).

A marriage obtained by fraud and misrepresentation may be annulled (*e*).

Celebration.]—The Roman-Dutch law did not insist on any religious ceremony as essential to marriage, and in this respect is followed by the Cape Acts. But by Roman-Dutch law (*f*) as well as by an Order in Council of 7th September, 1838 (*g*), and by the Cape Acts certain solemnities are required, without which the union and since 1860 (*h*) cohabitation between man and woman are not regarded as marriages, but as illicit intercourse. The publication of banns or its equivalent is necessary, whether the marriage takes place before a minister of religion or a lay marriage officer, unless a special licence has been obtained (*i*).

The issue of special licences is regulated by the Order in Council of 1838 (sect. 11), and by sect. 5 of the Act of 1860.

Banns.]—Any minister of the Christian religion, ordained or otherwise, set

(*z*) Mashonaland and Matabeleland are now administered (under the name of Southern Rhodesia) by the British Chartered South Africa Company (*vide post*, p. 292).

(*a*) St. R. & O. Revised (ed. 1904), vol. v. *tit.* Foreign Jurisdiction, p. 109.

(*b*) The extent of this legislative power is considered in *R. v. Earl of Crewe, Ex parte Sekgomé* (1909), 26 T. L. R. 192; (1910), 26 T. L. R. 439 (C. A.).

(*c*) Cape Acts, p. 3146.

(*d*) *Mills v. Acting Resident Magistrate* (1901), 11 Cape L. T. Rep. 438; Nathan, Common Law of South Africa, vol. i. p. 217.

(*e*) *Benjamin v. Salkinder* (1908), 25 Cape S. C. 512. S., a Jew, became formally betrothed to the minor daughter of B. S. represented to B. that it was necessary to attend with his daughter before a magistrate to register an intended marriage. S. had, in fact, obtained a special licence. The magistrate went through a ceremony of marriage, neither B. nor his daughter understanding its real nature. It was held that neither father nor daughter gave their consent to the marriage.

(*f*) See Political Ordinance of 1580 (Wessels, History of Roman-Dutch Law, p. 438), which continued in force in the Cape till superseded as to celebration by the Order in Council of 7th September, 1838.

(*g*) Cape Acts, p. 231. This Order, in substance, applied the rules of English law to the celebration of marriages in colonies which were under French, Roman-Dutch, or Spanish law (British Guiana (*ante*, p. 264), Cape Colony, Mauritius (*post*, p. 299), St. Lucia (*ante*, p. 274), and Trinidad (*ante*, p. 277)). It was extended to Natal in 1846 (*vide post*, p. 289).

(*h*) Act. No. 16 of 1860. Under Sir David Baird's proclamation of 26th April, 1806, it was directed that all marriages should be before an ordained clergyman or a minister of the Gospel. See *Broun v. Frits Broun's Executors* (1860), 3 Searle, 323.

(*i*) *Ngqobela v. Sihele* (1893), 10 Cape Sup. Ct. 351, Villiers, C. J.

apart to the ministry of the Christian religion, according to the usages of the persuasion to which he belongs, may publish banns of marriage in an audible manner some time during Divine service on Sunday, in the face of the congregation before whom the minister officiates, in the parish in which both or one of the parties to be married may dwell. The publication is to include the Christian name and surname and place of abode of the parties, and to be made on three Sundays preceding the marriage during morning service, if any, or if none, during evening service (*l*).

Provision is made for banns in certain parochial places (sects. 4, 5).

There is no obligation to publish banns unless two days at least before the time required for first publication the minister receives a notice of the true description of the names and abode of the parties, and how long they have dwelt there (sect. 8).

Where banns are published in different places, a certificate of due publication is to be given by the minister on request on which the marriage may be celebrated (sect. 6).

In cases in which banns of marriage have been lawfully published in different places—

- (a) Both of which are in the colony; or
- (b) One of which is in the colony and the other in another country; or
- (c) Each of which is in another country or countries;

the officiating minister in the colony, on production to him of the certificate of due publication, may solemnize the marriage between the parties whose banns have been published (*m*).

Licences.]—The issue of special licences is regulated by the Order in Council of 1838 (sect. 11), and by sect. 5 of the Act of 1860 (*n*), and by the Act (No. 9) of 1882 (*o*).

The marriage must be celebrated within three months of the last publication of banns (*p*).

The form and ceremony to be used is that in use or adopted by the persuasion to which the minister belongs, but if the form used is not that of the Church of England or of the Dutch Reformed Church, then the parties must in some part of the ceremony make a declaration of no impediment, and of taking each other in marriage (*q*).

The hours for marriage are between 8 a.m. and 4 p.m., and the presence of two credible witnesses is necessary, and registration is required (*r*).

The marriage of minors (not being widow or widower) without the proper consents is forbidden, and if such marriage takes place after banns forbidden is absolutely void (*s*).

Special provision is made as to publishing the banns for marriage of a widow or widower who has a minor child by a former marriage, in order to secure the inheritance of the minor (*t*).

Civil marriage officers.]—The Order in Council of 1838 (*u*) provided for the appointment of civil marriage officers to celebrate marriages in places where there were no ministers or not enough ministers.

Under Act No. 16 of 1860 (*x*) resident magistrates are made marriage officers, and power is given to appoint marriage officers to solemnize marriages between persons professing the Jewish faith, or professing the Mohammedan faith. Marriages before such officers are not invalid by reason that neither party to

(*l*) Order in Council, 1838, s. 1 (Cape Acts, p. 231).

(*m*) Order in Council, 1838, s. 6 (Cape Acts, p. 232); Act No. 11 of 1906 (Cape Acts, p. 5049), repealing Act No. 28 of 1897.

(*n*) Cape Acts, p. 779.

(*o*) *Ibid.* p. 1833.

(*p*) Order in Council, 1838, s. 9.

(*q*) *Ibid.* s. 7; Order in Council, 1840 (Cape Acts, p. 243).

(*r*) Order in Council, 1838, s. 21.

(*s*) *Ibid.* s. 10; *Willenburg v. Willenburg* (1908), 26 Cape S. C. 447.

(*t*) Act No. 12 of 1856, s. 6.

(*u*) Sect. 12.

(*x*) Sect. 4.

the marriage was reputed to belong to the faith of the denomination for which the officer was appointed.

The procedure for marriage before a resident magistrate is prescribed by the schedule to the Act of 1860 (*y*) as amended by Act No. 9 of 1882. It includes modes of asserting and proving the existence of a prior subsisting Mohammedan marriage. It is co-ordinate with and not exclusive of the powers of ministers to celebrate marriage (*z*).

Non-Christian marriages.]—Provision is made by Act 16 of 1860 (*a*) for the appointment of marriage officers for solemnizing the marriage of persons professing the Jewish or Mohammedan faith according to the Jewish or Mohammedan customs and usages, but no similar provision exists for marriages according to native custom (*b*). The Cape Courts have jurisdiction under statute to administer native law and custom in certain cases (Act No. 18 of 1864), and for this purpose may have a qualified power to recognize rights claimed by the issue of unions founded only on native usages and customs, but do not treat such unions as valid marriages (*c*).

(b) *Added Territories.*

The following territories, populated chiefly by blacks, have been added to the Cape Colony :—

British Bechuanaland (1895) (*d*); Griqualand East (*e*), Transkei (*i.e.*, Fingoland and Nomansland) (*f*), and Griqualand West (1877, 1880) (*g*); Pondoland (1894) (*h*); Tembuland; Emigrant Tembuland; Gcalekaland; and Bomvana-land (1885) (*i*).

In these districts, other than British Bechuanaland, before their incorporation, as a general rule native law and custom prevailed, subject to certain proclamations made by the High Commissioner or other British Governor, and the annexation Acts, orders, and proclamations provide for the continuance of much of the existing law until modified by proclamation or legislation. An official edition of the statutes, proclamations and notices in force in the Transkeian territories was published in 1907.

British Bechuanaland (*k*) was incorporated with the Cape Colony by a Cape Act (No. 41 of 1895) and by an Order in Council of 3rd October, 1895 (St. R. & O. Rev. (ed. 1904) vol. i, *tit.* Cape of Good Hope, p. 6).

The Cape Act repeals all laws in force in British Bechuanaland so far as they are repugnant to or inconsistent with the provisions of the Act, but all other laws continue in force in that part of the colony formed by the territory till altered or repealed by law.

The laws and regulations of British Bechuanaland as established by pro-

(*y*) Superseding sects. 13—15 of the Order in Council of 1838.

(*z*) Order in Council, 1838, s. 16.

(*a*) As to former law, see *Brown v. Frits Brown's Executors* (1860), 3 Searle, Cape, 313.

(*b*) *Ngqobela v. Sihle* (1893), 10 Cape Sup. Ct. 346, 352, Villiers, C. J.

(*c*) *Ibid.* (Nathan, Common Law of South Africa, vol. iv. sects. 1990, 1991). Native marriages in Tembuland before the Proclamation (No. 140 of 1885) might be recognized, though polygamous. But such marriages after that date cannot be treated as valid.

(*d*) Cape Act No. 41 of 1895; Order in Council, 30th October, 1895.

(*e*) The Cape Marriage Acts of 1860 and 1882 were extended to Griqualand East, Tembuland, and Transkei in 1887, and to Port St. John's in 1892. The Act of 1882 was extended to East and West Pondoland in 1894.

(*f*) Cape Act No. 38 of 1877. See sects. 1 and 2; and Proclamation No. 110 of 1879.

(*g*) Cape Act No. 39 of 1877. Laws in force in the territory not inconsistent with the Act continued in force (sect. 27). See Proclamation No. 112 of 1879.

(*h*) Cape Act No. 5 of 1894; Proclamation No. 338 of 1894. The law in force is fixed by Proclamations of the Governor of the Cape and Cape legislation.

(*i*) By Cape Act No. 3 of 1885, and Proclamation No. 140, 26th August, 1885, Cape laws are applied, except so far as their application may be modified by proclamation. No Cape Act or proclamation to apply unless expressly stated in some Act or proclamation (1885, No. 3, s. 2).

(*k*) As to Bechuanaland Protectorate, *vide ante*, p. 286.

clamation of the High Commissioner of 6th October, 1885 (No. 2, B. B. 1885), provided as follows :—

Marriages.

Art. 41. It shall not be lawful for any person to compel any woman to enter into a contract of marriage, or to marry against her wish.

Art. 42. Any marriages celebrated by any minister of the Christian religion according to the rites of the same, or by any civil marriage officer duly appointed by the Governor to solemnize marriage, or, if both *parties are natives*, according to ordinary native forms, provided such last-mentioned marriage shall be registered within three months from the date of such marriage in a book to be kept for that purpose by the resident magistrate of the district, shall be taken to be in all respects as valid and binding, and to have the same effect upon the parties and their issue and property, as a marriage celebrated under the marriage laws of the Cape Colony.

Art. 43. No registration of a marriage solemnized by a minister of religion or a marriage officer other than that prescribed by the 21st section (a) of the Marriage Ordinance (Order in Council) of the Cape Colony of September, 1838 (*l*), or the Marriage Act, 1860 (*m*), shall be necessary; and all marriages registered as aforesaid shall be considered as legally registered.

Art. 44. Any person married according to the native custom may register the first of such marriages, and no other, so long as the first registered wife is living, at the office of the resident magistrate for the district in which such marriage was celebrated, or in the office of the resident magistrate for the district within which the parties reside: Provided that such registration shall take place within three months after the celebration of such marriage.

Art. 45. *Fees on registration.*] —*Same as Basutoland (ante, p. 285).*

Proclamation, No. 17, B. B. 1886, of 11th October, 1881, provides :—

- (1) Every couple (not connected with each other by consanguinity or affinity in such a degree that they could not have been lawfully married in the colony of the Cape of Good Hope, and not being under any other legal disability to marry according to the laws of the said colony) united together within Bechuanaland as man and wife in the presence of witnesses by any form of words expressive of their mutual and solemn consent to become and be then and there and from thenceforth married together, or otherwise united together within the said territory as man and wife according to any form or with any solemnities lawfully observed therein before the establishment of H.M.'s sovereignty over British Bechuanaland, shall be deemed and taken to have been and to be lawfully married to all intents and purposes, and entitled to have such marriage registered.
- (2) A certified copy of the register of any such marriage shall be deemed and taken to be good evidence of such marriage before all Courts and magistrates, and for all legal purposes whatsoever (*n*).

NATAL.

The common law of this province as to marriage is the Roman-Dutch law (*ante, p. 284*).

Marriage with a deceased wife's sister is made legal, and issuers of marriage licences may not refuse to issue them for such marriages (*o*).

The Cape Marriage Order in Council of 7th September, 1838 (*p*), was applied to Natal by Ordinance No. 17 of 1846 (*q*).

(*l*) Cape Acts, p. 231, and *ante, p. 287*.

(*m*) *Ante, pp. 286, 287*.

(*n*) See also Proclamations No. 54, 1888 (Validation); No. 71, B. B. 1889 (Validation under 52 & 53 Vict. c. 38, Imp.); No. 167, B. B. 1892.

(*o*) Act No. 45 of 1898, which took effect on 3rd January, 1899. The Act is retrospective, and does not contain the limitations of the Cape Act (*ante, p. 286*).

(*p*) *Ante, p. 286*.

(*q*) Statutes of Natal, vol. ii. p. 1.

Marriage officers for Jewish and Mohammedan marriages may be appointed (*r*).

A marriage appears not to be valid if celebrated within ten days of the first banns, or without proper publication of banns (*s*).

Special marriage licences may be issued by resident magistrates for marriage within three months of issue. Before the licence is issued the applicants must make a declaration of no impediment, and, if minors, of consent of parents and guardians (*t*).

Indian immigrants.]—The period of majority for Indians is sixteen for the male, thirteen for the female (*u*).

Polygamous marriages contracted between Indian immigrants after September, 1891, are recognized as valid, but such marriages registered before that date are invalid (*x*).

On the arrival of Indian immigrants the protector demands the certificates of marriage issued to them at Calcutta and Madras, and registers the certificates which establish the marriage in the colony (*y*). He also registers as married any immigrants of sufficient age who declare to him their desire to be married (*z*).

The marriages of immigrants not professing Christianity after landing are effected by declaration made before and registered by the resident magistrate in a prescribed register, without any religious or other ceremony (*a*). Marriages contracted under Indian customs must be registered (*b*).

Provision is also made for the marriage of Indians who profess Christianity (*c*).

A marriage between Indians is void if the parties are by the religion of either prohibited from intermarriage on the ground of consanguinity or affinity (*d*).

Provision is made for granting decrees of divorce or nullity of marriage (*e*).

Native marriages—Christian rites.]—Where an African native has been exempted from native law (*f*), and marries a wife according to Christian rites, his children born to him by her before such marriage become legitimate (*g*).

For the marriage by Christian rites of a native who is not exempted (*ut supra*) a resident magistrate's licence is required. Before it is granted declarations have to be made as to the position of the natives, and warning must be given that reversion to polygamy after such marriage will expose the offender to prosecution for bigamy (*h*).

Unless licensed for that purpose by the Governor, no minister may solemnize any marriage between natives according to Christian rites (*i*).

Marriage between natives, according to native custom, is regulated by Chaps. X., XI. and XXIV. of the Native Code scheduled to Law 19 of 1891.

Such marriages are valid as native marriages (*k*).

(*r*) Law No. 19, 1881.

(*s*) *Schafer v. Schafer* (1907), 28 Natal L. R. 52, 456.

(*t*) Law No. 7 of 1889. As to the signing of marriage licences, see Law No. 2 of 1876.

(*u*) Law 25 of 1891, ss. 73, 74.

(*x*) *Ibid.* ss. 65, 66; Act No. 7 of 1896.

(*y*) Law of 1891, s. 68, extended by Law No. 2 of 1907 (Session 2), s. 6, as to polygamous marriages.

(*z*) Sect. 69.

(*a*) Sects. 70, 71.

(*b*) Law No. 2 of 1907 (Session 2).

(*c*) Law of 1891, ss. 72, 74.

(*d*) Sect. 75.

(*e*) Sects. 76—84.

(*f*) Law No. 28 of 1885, ss. 2—19.

(*g*) Law No. 46 of 1887, s. 20. By sect. 24 an exempted native who has married by Christian rites cannot afterwards contract marriage under native law. The daughter of an exempted native forfeits the exemption if she marries an unexempt native by Christian rites (sect. 25), or marries under native law (sect. 26).

(*h*) Law No. 46 of 1887 (Statutes of Natal, vol. ii. tit. Marriage (Natives), p. 1). This law is extended by Act No. 44 of 1903.

(*i*) Act No. 44 of 1903.

(*k*) Statutes of Natal, vol. ii. tit. Native Law, p. 27.

ORANGE FREE STATE (*kk*).

The common law of marriage of this province is based on the Roman-Dutch law and the Political Ordinance of 1580 (*ante*, p. 284).

Nonage.]—It is forbidden to celebrate the marriage of a male under eighteen or of a female under fifteen (*l*).

Prohibited degrees.]—Marriage is prohibited between all persons related to one another in the following degrees of consanguinity or affinity—

- (1) In the ascending and descending lines between persons related to one another either by legitimate or illegitimate birth *or by marriage*;
- (2) In the collateral degrees—
 - (a) Between brother and sister *by birth*, legitimate or illegitimate;
 - (b) Between uncle or great uncle and niece or great niece *by birth*, legitimate or illegitimate;
 - (c) Between aunt or great aunt and nephew or great nephew *by birth*, legitimate or illegitimate (*m*);
- (3) (a) Between cousins whose fathers are brothers, and whose mothers at the same time are sisters *by birth*, legitimate or illegitimate;
- (b) Between cousins of whom the father of the one is the brother of the mother of the other, and at the same time the mother of the one is sister of the father or mother of the other *by birth*, legitimate or illegitimate.

No marriage is unlawful by reason only that the parties are related to one another in any other degree of consanguinity or affinity than those above mentioned (*p*).

Celebration.]—The celebration of marriage is governed by Law No. 26 of 1899 (*q*). The Act does not deal with heathen marriages (*r*).

No minister, priest, or missionary may solemnize or consecrate a marriage unless he has authority from the Executive to solemnize and consecrate marriages (sects. 4, 6). Such persons are styled marriage officers (sect. 5). The landdrost may act as marriage officer (1) where there is no marriage officer at the chief town or seat of the assistant landdrost; or (2) where the parties, or one of them, have conscientious scruples against being married before the marriage officer (sect. 7).

Marriage may be solemnized (1) after banns published in the usual manner for three consecutive Sundays during Divine service in the church of the parish where the parties reside; (2) after licence, signed by the Governor or secretary, issued after inquiry before the landdrost after making the prescribed declarations of no impediment and consents (sects. 8—11). The marriage of minors under twenty-one without the prescribed consents is forbidden, and provision is made for the giving of consent by the High Court where the parents refuse (sect. 19). A widow may not marry within 180 days of the death of her former husband, nor a widower within three months of the death of his former wife (sect. 13). There is also a restriction, as in the Cape Colony, on re-marriage to the prejudice of infant children of a former marriage (*vide ante*, p. 287).

Penalties are incurred by officers who marry persons who have come from another State to contract a marriage illegal in that State (*s*), and marriages of

(*kk*) See 9 Edw. 7, c. 9, s. 6.

(*l*) Law 26 of 1899, s. 13. Proclamation 31 of 1903, which repeals c. xci. of the Free State Law Book, sets out the degrees as before by reference to the Roman-Dutch Law (*ante*, p. 284).

(*m*) And see Ord. No. 28 of 1902 (Validation).

(*p*) Ord. No. 31 of 1903, repealing c. xci. of Free State Law Book. As to marriage with a deceased brother's wife, see *Ex parte Smit* (1903), Orange River Rep. 17, Maasdorp, C. J. Penalties are incurred by burghers who go out of the colony to enter into prohibited marriages (1899, No. 26, s. 27). Law No. 26 of 1899 reserves to the churches to make their own rules as to legality of marriages as long as they do not infringe the civil rights, privileges, and duties of subjects of the State (s. 24).

(*q*) Repealing c. xc. of the Law Book.

(*r*) Sect. 28. Such marriages are governed by native custom.

(*s*) Sect. 13.

residents in the province contracted elsewhere are not treated as valid unless special leave to solemnize abroad was given by the Governor (*t*).

The marriage must be within three months after issue of licence or the last publication of banns (*u*). The ceremony is to follow the rites of the communion if the marriage officer is a minister, priest, or missionary of a recognized and tolerated Christian or Jewish Community (*x*).

Where the marriage is before the landdrost or marriage officer not within the above definition, the ceremony is prescribed by the law (*y*) and is followed by a declaration that the parties are lawfully married by the civil law.

The civil ceremony may be followed by a religious ceremony (*z*).

The hours for marriage are between 8 a.m. and 4 p.m. on any day. The place must be a church or public building devoted to Divine service, a public office, or a private house, with open doors, and at least two legally qualified witnesses must be present (*a*).

The marriage must be registered (*b*).

Provision is made for the proof and recognition of marriages abroad between persons of whom one or both was not resident in the colony at the date of the marriage (*c*).

S. applied during the South African war to A., landdrost of Boshof, for a divorce. A. granted the decree, and S. remarried before resident magistrate at Colesberg a girl of fourteen. Decree of divorce held invalid (*d*).

Divorce granted on ground of imprisonment of husband for life for assault on wife (*e*).

SOUTHERN RHODESIA.

This territory comprises the districts known as Mashonaland and Matabeleland (*f*).

Legislation is effected by a legislative body created under the order, subject to the assent of the High Commissioner for South Africa.

Any marriage celebrated by a minister of the Christian religion according to the rites of the same, or by any civil marriage officer duly appointed by the High Commissioner to celebrate marriage, is as valid and binding, and has the same effect upon the parties to the same and their issue and property, as a marriage celebrated under the marriage laws of the Cape Colony (*g*).

The law of the territory is that of the Cape Colony, except that no Cape Act promulgated since 10th June, 1891 applies to the territory unless specifically applied by proclamation, ordinance or regulation (*h*).

The Imperial Act legalizing marriage with a deceased wife's sister was published for information on 19th October, 1906 (*i*).

The administrator is given the power of the Cape Order in Council of 7th September, 1838 as to appointing marriage officers, and every assistant magistrate and acting assistant magistrate is given the same powers as resident magistrates have with respect to marriage in the Cape Colony (*k*).

(*t*) Sect. 15.

(*u*) Sect. 12.

(*x*) Sect. 16.

(*y*) *Ibid.*

(*z*) Sect. 23.

(*a*) Sect. 17.

(*b*) Sect. 18.

(*c*) Sect. 21.

(*d*) *Saaiman v. Saaiman* (1907), Orange River Rep. 62.

(*e*) *Nefler v. Nefler* (1906), Orange River Rep. 7.

(*f*) See Southern Rhodesia Order in Council, 1898 (St. R. & O. Revised (ed. 1904), tit. Foreign Jurisdiction; Jenkyns, *British Rule and Jurisdiction beyond the Seas*).

(*g*) Proclamation of 10th June, 1891, Art. 22 (Statute Law Southern Rhodesia, p. 73).

(*h*) Proclamation of 10th June, 1898, Art. 19; Order in Council, 1898, Art. 49.

(*i*) Statute Law Southern Rhodesia, 1906, p. 1068.

(*k*) Proclamation No. 12 of 1899 (Statute Law Southern Rhodesia, 1899, p. 22). Marriages previously solemnized by assistant magistrates were validated by Order in Council, 14th July, 1899. A similar order has been made as to Matabeleland, October 3rd, 1895.

The Courts of the territory are authorised to treat polygamous native marriages as valid in civil cases so far as they are recognized by native law or custom (*l*).

SWAZILAND PROTECTORATE.

The Roman-Dutch common law was applied by a Proclamation of 22nd Feb. 1907. The only proclamation as to marriage is No. 10 of 1905, by which certain marriages of coloured persons by ministers of religion between 1899 and 1904 were legalised.

TRANSVAAL.

The marriage law of this province rests (1) on the Roman-Dutch law; (2) on the laws of the South African Republic; (3) on legislative proclamations, ordinances and statutes passed since the territory was added to the King's dominions.

Prohibited degrees.—Under the prohibited degrees (*m*) of relationship are included—

- (a) All persons in the ascending or descending line *ad infinitum*, and in the collateral line to the third degree inclusive, including therefore uncle and niece, aunt and nephew, whether by blood or affinity.
- (b) First cousins, when both the parents of the one are related to both the parents of the other, as own brothers and sisters (*n*).

Nonage.—It would seem to have been intended to prohibit marriage by a male under eighteen, or a girl under fifteen, as in the Orange River, but there is a gap in the text of the law (*o*).

Insanity.—The marriage of a person of unsound mind is invalid, but an order of Court declaring a man to be of unsound mind, and appointing a *curator bonis*, is not conclusive of insanity, and merely shifts the burden of proof in the event of the man later marrying (*p*).

Widow and widower.—Under the Law of 1871 (*q*), except by special dispensation from the Government, a widower might not marry within three months after the decease of his wife, nor a widow within 300 days after the decease of her husband (*q*). But this provision was repealed in 1901 (*r*).

Minors.—The marriage of a minor without the consent of parent or guardian is void unless the resident magistrate or the High Court in a proper case have sanctioned the marriage (*s*).

Celebration.—Marriages between *white* persons by *white* persons is regulated by Laws No. 3 of 1871 (*t*), and No. 13 of 1909.

Marriage is not to be solemnized except after publication of banns or by special licence (*u*), nor after three months have elapsed since the last publication of the banns or the grant of the licence (*v*).

(*l*) Order in Council, 1898, Art. 50.

(*m*) *Ante*, p. 284.

(*n*) Law No. 3 of 1871, s. 4. Marriage with a deceased wife's sister seems not to have been legalised.

(*o*) *Ibid.* s. 8.

(*p*) *Prinsloo's curator bonis v. Crafford* (1905), Transvaal S. C. 669.

(*q*) Sect. 9. As to precautions in favour of children of former marriages, *vide post*, p. 294.

(*r*) Proclamation No. 40 of 1901.

(*s*) H. obtained special licence and married minor daughter of S. Parent's consent not obtained, but defendant, in collusion with X., not related to the minor, represented that parents were in Syria, and that X. was her aunt, and her only relative in the Transvaal. The minor's father was in Syria, but her mother was in the Transvaal, but unaware of the marriage. The marriage was declared null, as the parents had not given consent (*Solomon v. Hanna* (1903), Transvaal, 460; *vide ante*, p. 284).

(*t*) Transvaal laws in force in 1903, p. 7 (see sect. 25).

(*u*) 1909, s. 4.

(*v*) 1871, s. 7; 1909, s. 4 (3).

Banns are published either (i) on three successive Sundays during religious service in a church or other building habitually used for public worship, or (ii) by pasting them up for a period covering three successive Sundays in a conspicuous place to which the public have access at the magistrate's office.

The publication is in the district in which either party to the intended marriage resides (*x*).

Before a marriage is solemnized the bride and bridegroom must appear before the resident magistrate, who, as marriage commissioner, must inquire whether the provisions of the civil law have been satisfied, and shall, if necessary, grant a certificate (*y*).

Special licences are issued by a resident magistrate or assistant resident magistrate after appearance and examination of the parties. He must satisfy himself—

- (1) That in case of minority, consent of parents and guardians has been obtained (*z*);
- (2) If one of the intending spouses was previously married, and there are children of that marriage, that the orphan master has given a certificate for remarriage, and that the portions of the children are secured;
- (3) That the intending spouses do not stand within the prohibited degrees;
- (4) That there are no other lawful impediments to the marriage (*a*).

The resident magistrate can hold an examination on oath, and before the licence can be issued must have granted a certificate in the form prescribed by the Act of 1909 (*b*).

The marriage (except in unforeseen circumstances) must be solemnized between 8 a.m. and 4 p.m., and must be solemnized in a church or other public building used for religious service, or in a public office, or in a private dwelling house with open doors, and in the presence of at least two persons competent by law to act as witnesses (*c*).

The officiant may be—

- (1) The resident magistrate; or
- (2) A minister of the gospel authorised in that behalf by the Government (on certificate by the landdrost of compliance with the civil law) (*d*).

The minister may use the formulary of his own communion (*e*).

The resident magistrate must ask the bride and bridegroom separately as to the existence of impediments, and as to consent to acknowledge each other as husband or wife. If each answer yes, they give each other the right hand, and the resident magistrate declares that they are in the eye of the civil law lawfully joined together in matrimony (*f*).

The marriage is at once registered by the officiant in a form prescribed (*g*).

A marriage is not recognized as legal if both parties being resident (*h*) in the Transvaal went into another State, to be married there by an official or a minister of religion, unless they obtained special leave from the Transvaal Government, and within six months of the marriage forward written proofs of the marriage to the Government (*i*).

(*x*) 1909, s. 2.

(*y*) 1871, s. 4; 1909, s. 3.

(*z*) In case of an insurmountable difficulty in getting the consent the resident magistrate can grant it (sect. 16); and the High Court has the power to dispense with consent if the parents unreasonably refuse it (*A. v. B.* (1906), Transvaal S. C. 958, Wessels, J.).

(*a*) 1871, ss. 4, 5, 8; 1909, ss. 3—6.

(*b*) Sched. (A).

(*c*) 1871, s. 13.

(*d*) *Ibid.* s. 2.

(*e*) Sect. 12. As to the qualified liberty of churches to make their own marriage rules, see sect. 21.

(*f*) Sect. 12. A religious ceremony may be had later, if the parties wish, on production of the certificate of the civil celebration (sect. 20).

(*g*) Sects. 14, 15.

(*h*) This word is not defined in the law, and is not necessarily equivalent to "domiciled."

(*i*) 1871, s. 11. As to recognition of marriages outside the Transvaal between persons, of whom one, or both, were not resident in the State, see sect. 18.

Marriages solemnized between 1st September, 1900, and 1st October, 1909, by the Consul-General of the Netherlands, under the authority of a resolution of the Volksraad of 10th September, 1896, were validated in 1909 (*k*).

Coloured people.]—Law No. 3, 1897 (*l*), regulates the marriage of coloured persons, *i.e.*, persons belonging to or being descendants of any native race in South Africa, and persons being descendants of one of the races mentioned in Art. 1 of Law No. 3 of 1885, *i.e.*, Coolies, Arabs, Malays and Mohammedan subjects of the Turkish dominion. The marriages are contracted before an officer appointed by the Government, and may thereafter be consecrated by a minister of a Christian or other communion authorised by the Government.

Such a marriage will legitimate children born of the spouses before the marriage (sect. 15).

The divorce of coloured persons is governed by the same law, as amended in 1902 (*m*).

Mohammedans.]—A marriage by Mohammedan rites is not recognized as a legal marriage (*n*).

ZULULAND AND AMATONGALAND.

Zululand was a Crown Colony for which the Governor of Natal legislated by proclamation, but in 1897 was annexed to and made part of Natal (*o*).

Before the annexation, certain laws of Natal had been applied to Zululand, and in 1898 (*p*), the laws applied by proclamation of 21st June, 1887, were ordered to be read as amalgamated with the corresponding laws of Natal, and the laws of Natal passed since 21st June, 1887, were applied to Zululand with certain modifications and exceptions, including an exception of Law 46 of 1887, regulating the marriage of natives by Christian rites, and Law 7 of 1896, relating to Indian marriages, and Law 14 of 1897.

These exceptions seem to have been swept away in 1903 by Law No. 37 of 1903, when the general law of Natal was applied to Zululand and Amatongaland (*q*): but the native code (*r*) was not applied.

BRITISH CENTRAL AFRICA.

A. NORTH-EASTERN RHODESIA (*s*).

Civil and criminal jurisdiction is exercised, so far as circumstances permit, upon the principles of, and in conformity with, the substance of the law for the time being in force *in and for* England, save as modified by Order in Council,

(*k*) 1909, c. 13, s. 11.

(*l*) Laws in Force in 1903, p. 341.

(*m*) Proclamation 25 of 1902, repealing Arts. 10 (2) (3), and Art. 13 (*b*) of the Law of 1897, and making other provision.

(*n*) *White v. Pretoria Municipal Council* (1908), Transvaal Sup. Ct. 1128; *Mashua Ebrahim v. Mahommed Esop* (1905), Transvaal Sup. Ct. 59, where the marriage had been celebrated at Cape Town by a Malay priest by Mohammedan rites (*vide ante*, p. 288).

(*o*) Natal Act No. 37 of 1897.

(*p*) Natal Act No. 17 of 1898.

(*q*) Amatongaland, formerly a protectorate, was, in 1897, annexed to and included in Natal. See Stat. Rev. and Ord. 1896, p. 117; Jenkyns, *British Rule and Jurisdiction beyond the Seas*, p. 188; Natal Act No. 37 of 1903.

(*r*) Statutes of Natal, vol. ii. tit. Native Law.

(*s*) Part of the territory under the authority of the British South Africa Company, chartered in 1889. This abuts, on the East, on Nyasaland (*post*, p. 296). For boundaries, see Order in Council, 29th January, 1900 (St. R. & O. Revised (ed. 1904), vol. v. tit. Foreign Jurisdiction, p. 57).

regulations or King's regulations (*t*), and subject in the case of civil suits between "natives" to native law when not repugnant to justice or morality (*u*).

Regulations as to marriages were made in 1903 (No. 2). They are in almost the same form as those for Northern Nigeria (*ante*, p. 280).

They do not affect the validity of marriages celebrated under native law or custom (sect. 35).

Impediments.]—The English table of prohibited degrees applies except that a man may marry the sister or niece of his deceased wife. A subsisting marriage under native law or custom is a bar to marriage under the regulations (sect. 33.)

Preliminaries.]—There is no marriage by banns, but only on notice to, and certificate by, a registrar, or by special licence from the Administrator (sects. 7—20).

Celebration and Registration.]—Marriage may be celebrated only on the certificate of a registrar or licence of the Administrator.

It may be celebrated—

- (1) In a licensed place of worship by a recognized minister according to the rites, &c. of the church, &c. to which he belongs, between 8 a.m. and 6 p.m. ;
- (2) In a registrar's office between 10 a.m. and 4 p.m. ;
- (3) By Administrator's licence at the place specified therein by a recognized minister or a registrar.

In cases (1) and (2) the celebration must be with open doors, and in all cases the presence of two witnesses is necessary (sects. 21, 27).

If the registrar officiates he has to warn the parties that the marriage is monogamous and as to the penalties for bigamy (sect. 27).

A certificate of marriage is made out by the officiating minister or registrar ; if by the minister, a duplicate is sent to the registrar.

There is no such specific provision, as in Northern Nigeria (*ante*, p. 281), as to the marriage of natives professing Christianity, but more definite and complete provision is made than in Northern Nigeria as to succession to the property of persons subject to native law who marry under the ordinance and thereafter die intestate (sect. 39).

The High Court has the same jurisdiction in matrimonial causes as the High Court in England (*x*).

B. NORTH WEST RHODESIA AND BAROTZILAND (*y*).

In this "sphere of influence" the law applied is so much of the law of England for the time being as is applicable to local circumstances, subject to the provisions of Orders in Council in force, or proclamation made thereunder (*z*).

The marriage of persons of European descent is regulated by a Proclamation (No. 15) of 1906 (*a*).

C. NYASALAND (*b*).

In this territory the substance of the common law doctrines of equity and statutes of general application of England (as of 11th August, 1902) are in force (*c*), subject to an obligation, in cases to which natives are parties, to apply

(*t*) Order in Council of 1900, s. 21. The Regulations 1900—1907 are published, by authority, in a single volume.

(*u*) Order in Council, sect. 35.

(*x*) Regulation No. 4 of 1904, s. 7.

(*y*) Boundaries stated by Order in Council, 28th November, 1899, s. 1 (St. R. & O. Revised (ed. 1904), vol. v. tit. Foreign Jurisdiction, p. 52).

(*z*) Order in Council, s. 16.

(*a*) Proclamations, &c., 1906, p. 57. By sect. 32 (1) the English table of prohibited degrees (*ante*, p. 14) is applied.

(*b*) A British Protectorate since 14th May, 1891, known until 1907 as the British Central Africa Protectorate.

(*c*) Order in Council, 21st December, 1907 (St. R. & O. 1907, p. 175), repealing sect. 15 (2) of Order in Council of 11th August, 1902 (St. R. & O. Revised (ed. 1904), vol. v. tit. Foreign Jurisdiction, pp. 40, 45).

native law so far as it is applicable and is not repugnant to justice or morality, nor inconsistent with any Order in Council or ordinance (*d*).

Marriages other than marriages between natives are governed by Ordinance No. 2 of 1902, which is almost *iisdem verbis* with the North East Rhodesia Regulation of 1903 (*ante*, p. 294).

The English table of prohibited degrees (*ante*, p. 14) applies. Marriages between a man and the sister or niece of his deceased wife were legalised in 1902 (*e*).

Decrees of divorce or nullity may be granted under the provisions of Ordinance No. 5 of 1905 (*f*).

BRITISH EAST AFRICA.

A. EAST AFRICA PROTECTORATE (*g*).

Civil and criminal jurisdiction in the Protectorate is, except as otherwise provided, governed by Indian Acts (*h*), but the British Acts in Schedule 1 to the Foreign Jurisdiction Act, 1890, have been applied (*i*). Most of the marriage law depends upon local legislation.

Christian marriage.]—The celebration of marriage is regulated by an ordinance of 1902 (*k*), almost *iisdem verbis* with that of North Eastern Rhodesia (*l*).

Marriage of a man with the sister or niece of his deceased wife was legal between 1902 (*m*) and 1904, but is now invalid (*n*).

Native Christians.]—Natives may contract marriage under the ordinance of 1902 (*o*). By an ordinance of 1904 (No. 9) (*p*), natives both of whom profess the Christian religion, may marry on adequate notice to the minister (without complying with sects. 7—17 of the ordinance of 1902), but after complying with the formalities preliminary to marriage, established, usual or customary, for native Christians in the denomination to which the parties belong. The officiating minister is to act as registrar, and to assure himself that the necessary consents have been obtained, or, if there be no parent or guardian, to give the consent in writing (sects. 5, 6, 7).

Divorce.]—Ord. No. 12 of 1904 (*q*) gives the High Court of the Protectorate jurisdiction to grant divorce—

I. Where the petitioner resides in the Protectorate and professes the Christian religion, or has been married under the marriage ordinances in force in the Protectorate of East Africa, Uganda, or British Central Africa (*r*).

(*d*) Order in Council of 1902, s. 20.

(*e*) Ord. No. 2 of 1902, s. 33 (1).

(*f*) The grounds of nullity are relationship within the prohibited degrees, impotence, lunacy or idiocy of either party at the date of the marriage, evidence of a former subsisting valid marriage, consent obtained by force or fraud, such as would justify nullification by the law of England (sect. 13).

(*g*) For boundaries, see Order in Council, 11th August, 1902. They may be extended or reduced (*ibid.*).

(*h*) Order in Council of 1902, s. 15; and see list of Acts (Official Collection of Laws of British East Africa Protectorate (1876—1902), p. 195).

(*i*) Order in Council, sect. 13.

(*k*) No. 30 (East Africa Ordinances, vol. iv. p. 83).

(*l*) *Ante*, p. 296.

(*m*) Ord. No. 30 of 1902, s. 33.

(*n*) Ord. No. 3 of 1904 (East Africa Ordinances, vol. vi. p. 3), repealing sect. 33 (1) of the Ordinance of 1902.

(*o*) As to the law before that ordinance, see *Uledi v. Habibu* (1908), L. R. East Africa, vol. ii. p. 91; *Jerome Rcshe v. Angweda* (1908), L. R. East Africa, vol. ii. p. 21.

(*p*) East Africa Ordinances, vol. vi. p. 10.

(*q*) *Ibid.* p. 15.

(*r*) The general scheme of the ordinance is based on the English law and procedure as to matrimonial causes (sect. 4).

II. Where—

- (i) The marriage has been solemnized in the above territories, or Zanzibar, or Somaliland, or in the German, Italian or Portuguese territories in East Africa ; or
- (ii) The matrimonial offence has been committed in Africa ; or
- (iii) The husband has since the marriage adopted some form of religion other than Christianity.

Mohammedans..]—An ordinance of 1906 (*s*) provides for the registration of Mohammedan marriages and divorces.

The scheme of the ordinance is to require the parties to a marriage or divorce recognized by Mohammedan law (or if both be minors, their lawful guardian) to register the marriage or divorce with a Mohammedan official (appointed under the ordinance) within seven days of the marriage or divorce. The form of registration is prescribed, and the registrar must satisfy himself of the identity of the spouses, and in the case of marriage the register must be signed by two persons present at the celebration.

The registrar may attend the wedding at the request of the parties.

Registration does not validate nor does non-registration invalidate a marriage, and the ordinance is so expressed as not to affect the religion or religious rites or usages of any person subject to it (sect. 24) (*t*).

B. SOMALILAND (*u*).

The celebration of marriages in the Protectorate is governed by regulations of 1902 (*x*), which are almost *iisdem verbis* with the North-Eastern Rhodesia ordinance (*y*).

Impediments..]—Under the regulations, marriage between a man and the sister or niece of his deceased wife is valid, but otherwise the English table of prohibited degrees (*ante*, p. 14) applies (sect. 33 (1)).

Native law..]—The regulations do not affect the validity of marriages in accordance with native law or custom, except by restricting the right to contract such marriages in the case of persons already married by native law, and *vice versa* (sects. 52, 53).

C. UGANDA (*z*).

Marriages : 1. General law..]—The celebration of marriage is governed by an ordinance of 1902 (*a*), which is almost *iisdem verbis* with the North-Eastern Rhodesia Ordinance (*b*), and affects marriages by native law or custom only to the same extent as that ordinance. The English table of prohibited degrees is in force (*c*). Most of the registrars of marriages are ministers in charge of missions or congregations.

(*s*) No. 3. East Africa Ordinances, vol. viii. p. 31. It is supplemented by a proclamation applying it to all native Mohammedans in the mainland dominions of the Sultan of Zanzibar, and by rules as to fees (*l.c.* vol. ix. p. 90).

(*t*) For East Africa decisions on the Mohammedan Law of Marriage, see *Memsuo v. Fundi* (1904), L. R. East Africa, vol. i. p. 75 (right of married slave to divorce on emancipation) ; *R. v. Farjulla Dessier* (1904), L. R. East Africa, vol. i. p. 79 (marriage with deceased brother's widow) ; *Hassan Ali v. R.* (1906), L. R. East Africa, vol. ii. p. 4 (marriage between Mohammedan and Pagan).

(*u*) See Somaliland Order in Council, 1899.

(*x*) No. 3.

(*y*) *Ante*, p. 295.

(*z*) See Africa Order in Council, 1889 ; Uganda Order in Council, 1902.

(*a*) No. 5. It was intended to come into operation on 1st January, 1903, but by Ord. No. 11 of 1902 the commencement was fixed as a date to be proclaimed.

(*b*) *Ante*, p. 295.

(*c*) Marriage with the sister or niece of a deceased wife was allowed in 1902 (sect. 33 (1)), but forbidden in 1904 (Ord. No. 2).

2. *Native marriages.*]—An ordinance of 1903 (No. 14) (*d*), provides for the celebration of marriages between natives, both of whom profess the Christian religion, after complying with the formalities preliminary to marriage, usual or customary for natives of the religion to which the parties belong (sect. 5). The celebration is ordinarily to be only by a minister of the religion of the parties, and in a place licensed for marriages.

Divorce.]—The grant of decrees of divorce and nullity is governed by an ordinance of 1904 (No. 15). The procedure, &c. follows that of the High Court in England (sect. 4). A wife may obtain divorce if the husband since the marriage has renounced Christianity in favour of another religion, and has gone through a form of marriage with another woman (sect. 5).

The grounds of nullity are the same as in British East Africa (*e*).

Mohammedan marriage and divorce.]—The ordinances of 1902 and 1903 (*supra*) have, since 1906, ceased to apply to marriages between persons both professing Islam, of whom neither is party to an existing marriage (valid under these ordinances) with a non-Mohammedan (*e*). In 1906 provision was made for registering Mohammedan marriages and divorces on substantially the same terms as in British East Africa (*f*). The register is so framed as to give a full account of the parties, and to specify even the dowry.

BRITISH POSSESSIONS IN THE INDIAN OCEAN.

A. MAURITIUS AND DEPENDENCIES (*g*).

The marriage laws of Mauritius are embodied in the ordinances of 1890 as to civil status (*h*).

Capacity.]—Except by authority of the Governor, given for serious reasons, a male under eighteen and a female under fifteen cannot contract marriage (*i*).

There is no marriage where there is no consent (*k*).

No second marriage may be contracted before the dissolution of the first marriage (*l*).

In the direct line, marriage is prohibited between all ascendants and descendants, whether legitimate or natural, and between persons related by marriage in the same line (*m*).

In the collateral line, marriage is prohibited between a brother and sister, whether legitimate or natural, and between persons related by marriage in the same degree (*n*).

But marriage may be legally contracted between a man and the sister of his deceased wife, and no such marriage celebrated after the commencement of Ordinance No. 20 of 1880 is in anywise impeachable on the ground of such affinity between the parties (*n*).

Marriage is further prohibited between a man and his niece, or a woman and her nephew. But the Governor may, for grave reasons, authorise any such marriage (*o*).

Consents.]—The following rules apply to legitimate children only (sect. 54(4)).

A son under twenty-five and a daughter under twenty-one cannot contract

(*d*) Amended, as to fees, by Ordinance No. 3 of 1906.

(*e*) *Ante*, pp. 297, 298. Ord. No. 7 of 1906.

(*f*) *Ante*, p. 297.

(*g*) The law of this possession is based, to a large extent, on that of France after the Revolution, including the Civil Code.

(*h*) Which supersede portions of the Civil Code. The celebration of marriage was regulated by the Order in Council of 7th September, 1838, which also extended to the Cape Colony, St. Lucia, and Trinidad (*vide ante*, p. 286). That order seems to be superseded by the Civil Status Ordinance, 1890.

(*i*) Ord. of 1890, s. 41.

(*k*) Sect. 47.

(*l*) Sect. 48.

(*m*) Sect. 49.

(*n*) Sect. 50.

(*o*) Sect. 51.

marriage without the consent of his or her parents, or of the father if the parents disagree (sect. 52).

A person over twenty-one may marry without any consent if the father and mother are dead, or incapable of manifesting their will, or absent from the island (sect. 53).

Where the father and mother are dead or incapable of manifesting their will, the consent of grandparents in both lines; disagreement between the lines is equivalent to consent. If there is only one line, and the grandparents disagree, the grandfather's consent is enough.

If there is no grandfather or grandmother, the consent of a family council is necessary (sect. 54 (3)), subject to a right to go to a magistrate if difficulties arise as to finding or converting the relatives (sect. 57).

Natural children who are under twenty-one, cannot contract marriage without the consent of the parent who has acknowledged him or her. If both have acknowledged the child, both must consent, or if they disagree the father's consent is enough. If one is dead or absent from the island, the consent of the other suffices. If the father has been refused guardianship of the child (*p*), the guardian's consent is also needed (sect. 55).

Provision is made for obtaining the consent of a magistrate in the case of unacknowledged children, or death, absence or incapacity of persons otherwise required to consent.

Minors who are the wards of the protector of immigrants need his consent (sect. 56).

Celebration.]—Before a marriage can take place there must be two publications, with an interval of six days between each, in the office of the districts in which the marriage is to take place, and the office of any district in which one of the parties has resided or had his place of business for fourteen days immediately before the publication.

On the application the act of birth of each party, and in the case of a widow or widower a certificate of the death of the former spouse, must be produced to the officer, or an affidavit made in a prescribed form (sects. 61, 62).

The marriage notice is entered in a special register, and published in a conspicuous place in the office.

Special provision is made for certificates by the commanding officer where soldiers or sailors apply for publication of marriage (sect. 66), and for publication at Port Louis in the case of marriages intended to be celebrated out of the colony (sect. 67).

The marriage may not take place before the expiration of two days after the second publication (*q*), nor after twelve months from the first (sect. 65).

Provision is made for entering "oppositions" to the celebration of a marriage by the husband or wife of either of the parties seeking to marry, or by parents or relatives, even in the case of persons over twenty-five. The opposition, if necessary, is adjudicated on by the High Court (sect. 75).

Except in the case of a marriage *in articulo mortis*, no marriage in Mauritius is valid unless celebrated by an officer of civil status (sect. 79). It is celebrated in the civil status office of the proper district, or, if the parties so require, at any private house in the district (sect. 79).

The ceremony consists in reading aloud the names and descriptions of the parties as set out in the marriage notice, and any written consents which are necessary, and in reading Arts. 212, 213 and 214 of the French Civil Code. The officer then asks the parties whether they consent to take each other as husband and wife, and after they declare their consent he declares them duly married according to law and signs the act of marriage (*r*) (sect. 80).

Registration.]—Marriages celebrated at an office of civil status are registered

(*p*) See Ord. 4 of 1871.

(*q*) Unless the Governor, by order of dispensation, allows marriage on one publication only (sect. 68).

(*r*) Inquiry is to be made as to whether *contrat de mariage* or settlement has been made. It is not stated in the acte or the publications whether the parties are legitimate or illegitimate.

in duplicate in a prescribed form in civil register books (*s*). Official copies are as fully evidence as the register until proved false (*t*). Oral or any written evidence to prove a marriage in cases where no register has been kept, or the registers are lost or defaced (*u*).

Marriage in articulo mortis.]—A marriage may be celebrated by any member of any Christian church or any status officer, without previous publication or compliance with the formalities of the Civil Status Ordinance if one of the parties is *in articulo mortis* (sect. 86). Both parties must be able to signify consent and sign or make the act of marriage in the presence of two witnesses, if one is a medical practitioner, or of four witnesses if no medical man is there. All the witnesses attest the act. Where the husband is under twenty-one or the wife under eighteen, the consent of the father or mother must be produced in writing or evidenced by signing the act (sect. 87). The act of marriage must within three days be sent to the civil status officer of the district (sect. 88).

Indian immigrants.]—Natives of India, if lawfully married in India and meaning to go as immigrants to Mauritius, can obtain from the Mauritius emigration agent in India a certificate of the registration of the marriage, or may obtain a similar certificate from the protector of immigrants in Mauritius before they leave the depôt to which they are sent on landing (*x*).

These certificates are *primâ facie* evidence of a valid marriage and of the legitimacy and rights of the issue.

Legitimation.]—Natural children are legitimized by the subsequent marriage of their father and mother (*y*), whether their filiation is legally established before or after the marriage. This provision applies to children born of an irregular commerce between a man and his niece or a woman and her nephew, when the marriage of the father and mother takes place with the authority of the Governor under Article 51 of the Civil Status Ordinance, 1890. Adulterine children cannot be legitimated (*z*).

Divorce.]—Dissolution of marriage may be effected by judicial decree (*a*), and the divorced parties may remarry each other (*b*).

B. SEYCHELLES (*c*).

The Civil Status Ordinance, 1893 (No. 4) (*d*), provides for civil status officers. The marriage law of the possession is contained in Part IV. (Acts of Marriage), and in the Civil Status Amendment Ordinance (No. 7 of 1904) (*e*).

A male under *eighteen* and a female under *fifteen* cannot contract marriage, but the Governor may for grave reasons authorise any person under the above age to contract marriage (sect. 41).

There is no marriage where there is no consent (sect. 42).

A second marriage cannot be contracted before the dissolution of the first (sect. 43).

(*s*) Ord. of 1890, ss. 20—37.

(*t*) Sect. 27 (2).

(*u*) Sect. 30.

(*x*) Sects. 89—91.

(*y*) The names of such children may be entered on the *acte de mariage* of the parents (Civil Status Ordinance, 1890, s. 82).

(*z*) Ord. No. 37 of 1902.

(*a*) See the Ordinances superseding the French Civil Code (Revised Laws of Mauritius (ed. 1905), p. 557). Divorce by mutual consent is no longer permitted (*ibid.*).

(*b*) Ord. No. 31 of 1892.

(*c*) Formerly French, but British since 1814. As to the extent to which French law applies, see preface to Seychelles Laws Revised, vol. i. 1904. This possession has no common law. Its law rests on the French Civil Code (as promulgated 21st April, 1808), modified by subsequent legislation of Mauritius or Seychelles (2 Journ. Comp. Leg. Soc. (1897), p. 274).

(*d*) Seychelles Laws Revised, vol. ii., a recension of the Mauritius Civil Status Ordinance. Cf. Quebec (*ante*, p. 255); St. Lucia (*ante*, p. 274).

(*e*) Which deals with publication of marriages intended to be solemnized out of the colony (*Ibid.* vol. iii.).

Prohibited degrees.—In the direct line marriage is prohibited between all ascendants and descendants, whether legitimate or natural, and between persons related by marriage in the same line (sect. 44).

In the collateral line marriage is prohibited between a brother and sister, whether legitimate or natural, and between persons related by marriage in the same degree; but a marriage may be legally contracted between a man and the sister of his deceased wife, and no such marriage contracted after the commencement of Ord. 20 of 1880 (M) shall be in anywise impeachable on the ground of such affinity between the parties (sect. 45).

Marriage is further prohibited between a man and his niece or a woman and her nephew. But the Governor may for grave causes authorise any such marriage (sect. 46).

Consents.—The rules as to consent (sects. 52—59), publication (sects. 55—63), opposition (sects. 64—72), and celebration (sect. 74), are substantially the same as in Mauritius (*ante*, p. 299). Marriage, except in the case of marriage *in articulo mortis*, must be before an officer of civil status (sect. 74).

Marriage *in articulo mortis* is allowed under the same conditions as in Mauritius (sects. 81—83). The provisions of the Mauritius Ordinance of 1890 as to Indian immigrants (*ante*, p. 301) are applied to Seychelles (sect. 84).

Legitimation.—Legitimation *per subsequens matrimonium* is recognized (sect. 77).

ASIA.

A. BRITISH INDIA (*a*).

In British India, as in the Ottoman Empire, marriage is in the main treated as part of the personal law of the parties considered by reference to the religious faith which they possess (*b*). English law as regards marriage has never been treated as extending to Hindus or Mohammedans (*c*), nor, it would seem, to Sikhs, Jains, Buddhists, or Jews (*d*).

Hindus.—There is no general Indian legislation as to Hindu marriages, and the Hindu law (*e*), except as to the re-marriage of widows (*f*), is accepted as governing Hindus with respect to capacity, impediments (*g*), celebration and the effects of marriage. According to the decisions, Hindus of the three “twice born” castes—Brahmins, Kshattriyas and Vaisyas—cannot validly contract marriage in India except with members of their own caste (*h*).

Malabar marriages.—The Malabar Marriage Act, 1896 (Madras Act iv. of 1896), makes special provision as to “Hindus domiciled in the Presidency of Madras who follow the Marumakkatayam (*i*) or the Aliyasantana law of inheritance.”

Mohammedans.—There is no Indian legislation as to Mohammedan marriages (*k*). There are many sects of Mohammedans, and the prohibited degrees,

(*a*) As to the extent to which English law applies in India, or to natives of India, see Ilbert, *Government of India* (2nd ed.), c. vi. Aden is governed as part of the Bombay Presidency.

(*b*) In the case of spouses resident in India, their personal status, and what is frequently termed the status of the marriage, is not solely dependent on domicile, but involves the element of religious creed (*Skinner v. Skinner*, L. R. 25 Ind. App. 34, 41).

(*c*) Reg. of 1773, 23rd Rule; Reg. of 1780; and see 21 Geo. 3, c. 70, ss. 17, 18.

(*d*) Ilbert, p. 393.

(*e*) *I.e.*, the customs and usages of the caste, sect, tribe, or family to which the parties belong (Mayne, *Hindu Law and Usage* (7th ed.), c. iv.).

(*f*) India Act No. xv. of 1856. See Mayne, *l. c.* p. 755.

(*g*) For the prohibited degrees, see Mayne, *l. c.* pp. 103—106; Ghose, *Hindu Law*, 588, 597.

(*h*) *Padam Kumari v. Suraj Kumari*, Ind. L. R. 28 All. 458. This incapacity is not recognized in England as preventing a Hindu from contracting a binding marriage in England (*Chetty v. Chetty*, (1909) P. 67).

(*i*) Mayne, *Hindu Law and Usage* (7th ed.), 120. In this system descent is traced through the mother.

(*k*) There is such legislation in other parts of the Empire—*e.g.*, Ceylon (*post*, p. 310),

&c. may vary with the sect (*l*). There are also communities partly under Mohammedan, partly under Hindu law (*ll*).

Difficult questions have arisen as to the validity of a marriage between two Christians, professed Muslims, in order to contract the marriage (*n*), and as to the effect on a Christian marriage of a subsequent Mohammedan marriage (*u*).

It would seem that a Mohammedan man cannot contract valid marriage with a Pagan woman, unless at the time of the marriage she adopts Islam (*o*).

Jews.]—The making and validity of a contract of marriage between Jews in India depends wholly on the religious usages of the Jewish faith (*vide ante*, p. 29), and is unaffected by legislation.

Sikhs and Jains.]—The marriages of Sikhs and Jains (*oo*) are governed by their customary law; but an Act of 1909 (No. vii.) legalises marriages among the Sikhs by a ceremony known as Anand.

Parsis.]—The marriage and divorce of Parsis in India is governed by legislation contained in two Acts, Nos. XV. and XXI. of 1865 (*p*). The prohibited degrees are specified in a letter gazetted in 1880, and published as a schedule to Act XV. (*q*). The marriage is monogamous (*r*).

Buddhists.]—Buddhist law is applied in British Burma in questions of marriage, succession and inheritance, where the parties are Buddhists (*s*).

One effect of the recognition of native customs of marriage and of male polygamy is, that bigamy is not criminal in India, unless the subsequent marriage is void by reason of the subsistence of the prior marriage (*t*). This provision renders Hindu (*u*) and Mohammedan (*x*) women liable for bigamy, where a male Hindu or Mohammedan would not be liable; and raises questions as to the effect of change of religion on liability for bigamy (*y*).

Christians.]—The marriage and divorce in India of persons professing Christianity is regulated by Indian legislation.

Marriage.]—The Christian Marriage Acts apply to persons professing the Christian religion (*z*), including native Christians or natives of India converted to Christianity and their Christian descendants (*a*).

The principal Act is No. XV. of 1872 (*b*). It does not apply to marriages performed in India by a minister, consul or consular agent, or between subjects of the State which he represents and according to the laws of that State (*c*), and

Straits Settlements (*post*, p. 314), East Africa and Uganda (*ante*, pp. 298, 299), Cape Colony (*ante*, p. 288), and West Africa (*ante*, pp. 279, 280, 283).

(*l*) For the rules of Islam as to marriage reference should be made to R. K. Wilson (Mohammedan Law (3rd ed.), 1908) and Abdurrahman Khan (Institutes of Muslim Law, tit. Mohammedan Marriage Law). As to marriage by repute, see *Ghazanfar Ali Khan v. Kaniz Fatima* (1910), L. R. 37 Ind. App. 105.

(*ll*) See *Haji Abdul v. Hadji Hamed*, 5 Bombay L. R. 1016.

(*m*) *Skinner v. Orde*, 14 Moore, Ind. App. 309.

(*n*) *Skinner v. Skinner*, L. R. 25 Ind. App. 34, 41; Nelson, Ind. Penal Code (5th ed.), p. 882.

(*o*) *Vide ante*, p. 298, n. (*t*).

(*oo*) As to Jain marriages, see *Lala Rup Chand v. Tambu Parshad* (1910), L. R. 37 Ind. App. 93.

(*p*) Modified in details by subsequent legislation. See Indian General Acts in Force (4th ed.), vol. i. p. 560.

(*q*) Indian General Acts in Force (4th ed.), vol. i. 564, 565, notes.

(*r*) As to impotency *quoad hanc* as a ground of nullity, see *S. v. B.*, Ind. L. R. 16 Bombay, 639; and *G. v. M.*, 10 App. Cas. 171.

(*s*) Burma Courts Act, 1875, s. 4. As to that law in British India, see Sparks' Code, Burmese Law; Jardine, Notes on Buddhist Law; *Moung Hmoon Hraw v. Mah Hpwah*, L. R. 11 Ind. App. 109; *Ma Wan Di v. Ma Kin*, L. R. 35 Ind. App. 41.

(*t*) Penal Code, s. 494.

(*u*) *Badal Aurat v. R.*, Ind. L. R. 19 Calcutta, 79.

(*x*) *Bombay Government v. Ganga*, Ind. L. R. 4 Bombay, 330.

(*y*) Mayne, Ind. Cr. L. (ed. 1896) 793—796; Nelson, Ind. Penal Code (5th ed.), pp. 874—886.

(*z*) *Queen-Empress v. Veeradu*, Ind. L. R. 18 Madras, 230, which deals with the marriage of a child of three, who had been baptized, and whose father was a Christian.

(*a*) Act XV. of 1872, s. 4.

(*b*) Unrepealed General India Acts (4th ed.), vol. ii. p. 345.

(*c*) Sect. 87.

it does not validate any marriage solemnized under it which the personal law applicable to either of the parties forbids him or her to enter into (*d*).

The Act applies throughout British India, and in native States to Christian subjects of the King (*e*).

Marriage between persons (one or both professing the Christian religion) may be solemnized—

- (1) By a person who has received episcopal ordination if solemnized according to the rules, rites, ceremonies and customs of the church of which he is a minister (*f*);
- (2) By any clergyman of the Church of Scotland if solemnized according to the rules, &c. of that church (*g*);
- (3) By any minister of religion licensed under the Act to solemnize marriages (*h*);
- (4) By or in the presence of a marriage registrar appointed under the Act, who must be a Christian (*hh*);
- (5) By a person (who must be a Christian) licensed under the Act to grant certificates of marriage of native Christians (*hhh*).

In the case of marriages by clergy of the Churches of England, Scotland (*i*) and Rome, no specific provision is made as to banns, &c. (*k*). The marriages must, in the cases of the Church of England and Rome, be solemnized between 6 a.m. and 7 p.m., unless there is a special licence from the proper ecclesiastical authority (*l*).

Except under special licence, Anglican marriages must be celebrated in a church where worship is generally held according to the forms of the Church of England (*m*).

In the case of marriages before a licensed minister of religion (*n*), the Act prescribes the notices and publications. Where one party is a minor, the minister who receives the notice must send it on to the marriage registrar for publication in the registries of the district (*o*). The ministers are empowered, after proper inquiries, to issue a certificate of marriage notice and the making of a declaration of no impediment (*p*), and special provision is made to secure that native Christians understand the marriage notices, &c. (*q*), and to ascertain that the proper consents have been obtained by minors (*r*).

Marriages between native Christians (*s*) may be certified by a licensed person (*t*) without the marriage notice required in the case of marriages by licensed ministers of religion:—

- (1) If the man is over sixteen and the woman over thirteen;
- (2) If neither party has a husband or wife still living; and

(*d*) Sect. 88.

(*e*) Sect. 1.

(*f*) This applies to Orthodox, Roman Catholic, Armenian, Syrian, and Nestorian Christians, as well as to Anglicans.

(*g*) Sect. 5 (2). A lay trustee of an Anglican church cannot lawfully celebrate marriage: *Queen-Empress v. Fischer*, Ind. L. R. 14 Madras, 342.

(*h*) Sect. 5 (3).

(*hh*) Sects. 5 (4), 7, 8.

(*hhh*) Sects. 5 (4), 19.

(*i*) See Act ii. of 1891, s. 3.

(*k*) Act of 1872, s. 10. But oaths or declarations required by the rule or custom of a church to obtain marriage are covered by sect. 66.

(*l*) Sect. 10 (1) (2).

(*m*) Sect. 11.

(*n*) This term seems not to extend to Orthodox, Armenian, or Syrian Episcopal churches, but seems to cover German, Lutheran, and Protestant non-Episcopal denominations (*Caussaret v. Saurez*, Ind. L. R. 19 Madras, 273).

(*o*) Sects. 12—16.

(*p*) Sects. 17, 18.

(*q*) Sect. 23.

(*r*) Sects. 15, 19, 22.

(*s*) As to earlier law, see *Kristo Mohun v. Anunda* (1871), 16 Calcutta W. R. 249.

(*t*) As to celebration of marriage in Hindu form between a native Christian and a Hindu, see *Queen-Empress v. Yohan*, Ind. L. R. 17 Madras, 391.

- (3) If in the presence of a licensed person and at least two other credible witnesses, each party says to the other "I call upon these persons here present to witness that I, A. B., in the presence of Almighty God and in the name of our Lord Jesus Christ, do take thee, C. D., to be my lawful wedded wife" (or husband), or other words to the like effect (*u*).

When a marriage is to be solemnized by or in the presence of the registrar, the procedure is substantially the same as in the case of a civil marriage in England, but with special provisions as to marriages of minors or of native Christians, or in a native State (*x*).

The Act contains provisions for the registration of marriages by all persons authorised to solemnize or certify them under the Act (*y*).

Marriages solemnized in accordance with sects. 4, 5 are not avoided by irregularities as to statement of residence, parental consent, or in the notice of marriage, or as to certification, time or place of celebration, or registration (*z*).

Prohibited degrees.]—No Indian statute contains any table of prohibited degrees applicable to any class of persons in India (*a*). Lord Lyndhurst's Act (*ante*, p. 81) has been held not to apply to the marriage of a person domiciled in Calcutta with his deceased wife's sister (*b*). There is no Indian enactment absolutely forbidding such a marriage (*c*), and the reference to prohibited degrees in sect. 9 of the Indian Divorce Act (IV. of 1869) does not necessarily mean degrees prohibited by the law of England, but means the prohibited degrees applying to the parties by reason of their domicile and faith (*d*).

A member of the Church of England having an English domicile of origin in 1871 married Mary Ross in Calcutta by the rites of the Church of England. In 1887, after her death, he married Julia, her uterine half-sister. The second marriage was held void, whether the man's domicile were English or Indian, on the grounds (1) that if it was English the man carried with him to India the law as to capacity to marry by which he was originally governed, irrespective of his creed; (2) that if it was Indian he was governed by the law of the church to which he belonged (*e*).

Non-Christians.]—The Special Marriage Act, 1872 (No. III. of 1872), provides for a form of marriage in cases where neither party professes the Christian, Jewish, Hindu, Mohammedan, Parsi, Buddhist, Sikh or Jain religion (*m*).

(*u*) Sect. 60. This section does not apply to marriages between Roman Catholics (sect. 65).

(*x*) Sects. 38—59.

(*y*) Sects. 27—37, 54, 62; and see *Caussavel v. Saurez*, Ind. L. R. 19 Madras, 281.

(*z*) Sect. 77.

(*a*) As to Parsis, *vide ante*, p. 303.

(*b*) *Das Mercers v. Cones*, 2 Hyde, 65; *Lopez v. Lopez*, *infra*.

(*c*) Under Hindu and Mohammedan law such marriages are lawful. See *Lucas v. Lucas*, Ind. L. R. 32 Calcutta, 195, Mitra, J.

(*d*) *Lopez v. Lopez*, Ind. L. R. 12 Calcutta, 706. See *per* Wilson, J., at p. 730. The husband was a domiciled East Indian, and he and his two wives (sisters) were Roman Catholics. The families appear to have been of Portuguese origin, but there was no finding as to whether they were descended from English ancestors or European settlers, or from native converts. In this case, it was established that in the Catholic Church, as applied in India, marriage with a deceased wife's sister could be celebrated by dispensation; and on the facts of celebration the Court presumed a dispensation. See also *Lucas v. Lucas*, *ubi sup.*, a case of a member of the Greek Church who joined the Roman Catholic Church and was married in that Church to an Armenian. The Greek and Armenian churches forbid marriage with a deceased wife's sister, the former absolutely.

(*e*) *Hilliard v. Mitchell*, Ind. L. R. 17 Calcutta, 324, Wilson, J. See also *Queen-Empress v. Robinson*, Ind. J. R. 16 Allahabad, 212, 215. *Quære*, as to the effect on Christian marriages in India of 7 Edw. 7, c. 47 (*ante*, p. 162).

(*m*) The provisions of the Act are alternative to any other mode of contracting marriage contracted independently of the Act (sect. 21). For text of Act and the parts of India to which it applies, see *Unrepealed General Indian Acts* (4th ed.), vol. ii. p. 254. It was amended as to registration by Act VI. of 1886.

Such persons may marry under the Act if—

- (1) Either has a husband or wife living ;
- (2) The party if a male is eighteen and the female fourteen, according to the Gregorian Calendar ;
- (3) Each party if under twenty-one has obtained the consent of father or guardian ; and
- (4) The parties are not related to each other in any degree of consanguinity or affinity which would, *according to the law to which either of them is subject*, render a marriage between them illegal (*n*).

No such law or custom, other than one relating to consanguinity, shall prevent them from marrying, and no law or custom as to consanguinity shall prevent them from marrying unless a relationship can be traced between the parties, through some common ancestor who stands to each of them in a nearer relationship than that of great great grandfather, or great great grandmother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor of the other (*o*).

Notices and celebration.]—To procure marriage under the Act, a marriage notice must be given to the marriage registrar (appointed under the Act) by whom it is to be celebrated (*p*). Provision is made for filing the notices, and copying them into a marriage notice book (*q*), and for giving and dealing with objections to the marriage (*r*). Before the marriage is celebrated a declaration must be signed by the parties and three witnesses (in the presence of the registrar) of facts showing that the conditions above stated are satisfied (*s*). The marriage is celebrated either in the registrar's office, or at such other place within reasonable distance therefrom as the parties desire (*t*), and in the presence of the registrar and the three witnesses who signed the declaration. Any form may be used, provided that each party says to the other in the presence and hearing of the registrar and witness, "I, A., take thee, B., to be my lawful wife or husband" (*u*). After celebration the marriage is certified by the registrar in the prescribed form, and the register book is signed by the parties and the three witnesses (*x*).

Marriage under the Act is monogamous, so as to bring into operation the bigamy sections of the Penal Code if either party re-marries while the marriage subsists (*y*). Marriages under the Act may be dissolved under the Indian Divorce Act (*post*, p. 307) (*z*).

Mixed marriages.]—It would seem that no recognized legal status is accorded in India to a marriage between a Hindu and a Christian, or a Mohammedan, Buddhist, Sikh, Jain, or Parsi, unless the marriage takes place in accordance with the Christian Marriage Act, 1872. It might, perhaps, be considered that going through the ceremony of marriage in the form appropriate to a particular religious persuasion is evidence of adherence by both parties to that persuasion (*a*).

It seems doubtful whether a marriage according to Mohammedan rites between a Christian and a Mohammedan is valid (*b*).

(*n*) Sect. 2.

(*o*) Sect. 2, provisoes.

(*p*) Sects. 3, 4.

(*q*) Sect. 5.

(*r*) Sects. 6—9.

(*s*) Sect. 10.

(*t*) Sect. 12. There are rules regulating the conditions of celebration elsewhere than at the registrar's office.

(*u*) Sect. 11.

(*x*) Sect. 13.

(*y*) Sect. 16.

(*z*) Sect. 17.

(*a*) But see *Queen-Empress v. Yohan*, Ind. L. R. 17 Madras, 391 ; *Queen-Empress v. Paul*, Ind. L. R. 20 Madras, 12.

(*b*) *Skinner v. Durga Pasad* (1904), Allahabad, W. N. 213 ; and see Christian Marriage Act, 1872, s. 68.

Dissolution of Marriage.

1. *Christians.*]—The divorce of persons professing the Christian religion is regulated by the Divorce Act (No. IV. of 1869) (*c*).

The jurisdiction of the Courts under the Act may be exercised only in cases in which the petitioner professes the Christian religion and “resides” in India when the petition is presented. Decrees of dissolution cannot be made unless (a) the marriage was solemnized in India; or (b) the adultery, rape, &c. complained of was committed in India; or (c) the husband has since the marriage exchanged his profession of Christianity for the profession of some other form of religion, and gone through a form of marriage with some other woman (*d*). Decrees of nullity cannot be made unless the marriage was solemnized in India (*e*).

2. *Married natives converted to Christianity.*]—The Native Converts Marriage Dissolution Act (No. XXI. of 1866) (*f*) provides for the dissolution in certain cases of marriages of native converts to Christianity deserted or repudiated on religious grounds by their wives or husbands.

If a native husband (*i.e.*, a married man domiciled in British India who is not a Christian, Mohammedan, or Jew) changes his religion for Christianity, and in consequence of such change is for six continuous months deserted or repudiated by his native wife (*i.e.*, his wife being domiciled in British India and not a Christian, Mohammedan, or Jew), he may sue for conjugal society. If after interrogating the respondent and full inquiry into the case the judge is satisfied that the refusal to cohabit is the petitioner's change of religion, he adjourns the case for a year, and if at the end of that period the refusal has continued and the respondent still refuses, the judge may dissolve the marriage.

Similar provisions are made as to a native wife who is converted to Christianity (*g*). Where the parties had not attained puberty at the date of marriage, and the marriage has not been consummated, the year's delay is not required (*h*).

3. Persons married under the Special Marriage Act, 1872, may be divorced under the Divorce Act, 1869, *supra*. See sect. 17 of the Act of 1872 (*i*).

B. CEYLON.

The law of Ceylon, so far as it is of European origin, rests on a basis of Roman-Dutch law (*k*), which was preserved, with certain modifications, on the acquisition of the colony by conquest in 1799 (*l*).

The following ordinances of the colonial legislature are in force with regard to marriage:—

1806. Aug. 5. Code regulating marriage of Mohammedans (*m*).

1870. No. 3. Marriages in the Kandyan provinces (*n*).

(*c*) For extent of Act and subsequent amendments, see Unrepealed General Indian Acts (4th ed.), vol. ii. p. 5.

(*d*) Sect. 10.

(*e*) Sect. 2. See *Gasper v. Gonsalves* (1874), 13 Bengal L. R. 109. For grounds of nullity, see sect. 19.

(*f*) Unrepealed General India Acts (4th ed.), vol. i. p. 577.

(*g*) Sects. 4—19. The Act contains (sect. 34) a special provision that nothing therein shall render invalid any marriage of a native convert to Roman Catholicism, if celebrated in accordance with the rules, rites, and ceremonies of the Roman Catholic Church (see Act No. XVI. of 1874).

(*h*) Sect. 18.

(*i*) *Ante*, p. 306.

(*k*) Journ. of Comp. Leg. Soc. (N. S.) vol. ii. p. 98; Pereira, Institutes of the Laws of Ceylon, vol. i. Introduction. And see *ante*, p. 264 (British Guiana) and p. 284 (South Africa).

(*l*) Proclamation of 23rd September, 1799 (St. R. & O. Revised (ed. 1904), vol. viii. p. 415).

(*m*) Minutes of Council, 5th August, 1806 (1 Ceylon Leg. Enacts. i. 40).

(*n*) Ceylon Leg. Enacts. i. 730.

1886. No. 8. } Mohammedan marriages registration (o).
 1888. No. 2. }
 1889. No. 2. Actions for nullity (sect. 607) (p).
 1903. No. 12. Gives effect to Foreign Marriage Order in Council, 1903 (q).
 1907. No. 19. Marriage of persons not Mohammedans or Kandyan (r).

The ordinances do not contain the whole marriage law of Ceylon, and the blanks therein are to be filled by reference to Mohammedan law in the case of persons professing Islam, and by reference to the Roman-Dutch law in the case of Christians and Hindus and Buddhists or Kandyan (s). The ordinances incorporated in that of 1907 have been held to apply to Hindus (t).

The Malabars of Jaffna are governed as to marriage by customary law, recognized by the Dutch in 1707 and by Regulation 18 of 1806 (u).

The Roman-Dutch law presumes in favour of marriage rather than of concubinage, and where a man and woman are proved to have lived together as man and wife the law of Ceylon presumes (x), unless the contrary is clearly proved, that the cohabitation was in consequence a valid marriage and was not concubinage; and where a form of marriage is proved to have been gone through between the parties, who have thereby shown matrimonial intention, those claiming by virtue of the marriage are not bound to prove that all necessary ceremonies were performed (y).

Christian Marriages and Civil Marriages.

Nonage.—Except in the case of Mohammedan and Kandyan marriages a marriage is not valid if the male party has not completed sixteen years of age, or the female twelve, or, if she is a daughter of European or Burgher (z) parents, fourteen (a).

Affinity or consanguinity.—A. The prohibited degrees are defined as to Mohammedan marriages by the Code of 1806.

B. By sect. 17 of the Marriage Ordinance, 1907, no marriage shall be valid—

- (a) Where either party shall be directly descended from the other; or
- (b) Where the female shall be the sister of the male either by the full or the half-blood, or the daughter of his brother or his sister by the full or the half-blood, or a descendant from either of them, or daughter of his wife by another father, or his son's or grandson's or father's or grandfather's widow; or
- (c) Where the male shall be brother of the female either by the full or the half-blood, or the son of her brother or sister by the full or the half-blood, or a descendant from either of them, or the son of her husband by another mother, or her deceased daughter's or grand-daughter's or mother's or grandmother's husband.

Marriage or cohabitation between parties standing towards each other in any of the above enumerated degrees of relationship is to be deemed an offence punishable by imprisonment for not over one year (sect. 18).

Sect. 14 of the Kandyan Marriage Ordinance, 1870, contains a like definition of consanguinity.

(o) Ceylon Leg. Enacts. i. 44.

(p) *Ibid.* vol. ii. p. 617.

(q) *Ibid.* vol. iii. 938.

(r) *Ibid.* 910.

(s) *Karonchinami v. Angoham*, 1 Ceylon N. L. R. 276.

(t) *Valisammai v. Annamai* (1900), 4 Ceylon N. L. R. 8, 12, Moncrieff, J.

(u) *Pereira*, Institutes of Law of Ceylon, vol. i. pp. 17, 18. Cf. the Madras Act, No. IV. of 1896, dealing with Malabar marriages (*ante*, p. 302); and see Mayne, Hindu Law and Usage (7th ed.) 120.

(x) As does the law of England (*Piers v. Piers*, 2 H. L. C. 331; *Morris v. Davies*, 5 Cl. & F. 163; *De Thoren v. Att.-Gen.* (1886), 1 App. Cas. 686), and of Scotland (*Breadalbane Peerage Claim* (1867), L. R. 2 H. L. 269).

(y) *Sastry Velaidier Aronegary v. Sembecutty Vaigalie* (1881), 6 App. Cas. 364. The marriage in question was said to have been by the customs of the Tamils, and to have been celebrated before the passing of the ordinances requiring registration of marriages.

(z) *I.e.*, Eurasians claiming Dutch or Portuguese descent.

(a) Ord. 1907, No. 19, s. 16.

It will be noted that the definition does not prohibit marriage with a deceased wife's sister (*b*).

Previous adultery.]—The impediment created under Roman-Dutch law and by canon law (*c*) by previous adulterous intercourse between the parties is no longer recognized by the law of Ceylon (*d*).

Prior marriage.]—By sect. 19 of the ordinance of 1907 no marriage is valid where either of the parties thereto shall have contracted a prior marriage which shall not have been legally dissolved or declared void (*e*).

Pre-contract.]—Sect. 21, sub-sect. 1, prohibits suits to compel solemnization of marriage by reason of any promise or contract of marriage, or by reason of the seduction of the female, or by reason of any cause whatever (*f*); and sub-sect. 2 declares that no such promise, contract, or seduction shall vitiate any marriage duly solemnized and registered under this ordinance (*g*).

Consent.]—In the case of persons under twenty-one the proper person to consent to the marriage is the father, or if he is dead or under legal incapacity or is in fact beyond the island and unable to make known his will, the mother; or if both father and mother be dead, &c., the guardian appointed by the father; or if the father be dead, &c., the guardian appointed by the mother or by a competent Court. If there is no person qualified as above, the judge of the district Court after summary inquiry may give the consent (*h*).

Notice, certificate and licence.]—Persons seeking to marry under the ordinance of 1907 must give notice to a registrar for the division in which one party has been resident (*i*). The notice contains a full statement of particulars, and whether necessary consents have been given (*k*), and is filed, entered into the notice book, and published by posting (for twelve successive days after entry) in a conspicuous place in the registry (*l*). At the end of the twelve days if the marriage is not forbidden, the registrar may issue his certificate (*m*). Licences are issued by the Registrar-General or provincial registrars in certain cases (*n*).

Religious ceremony.]—The marriage may be solemnized by or in the presence of a minister of the Christian religion in a registered place of worship or other authorised place between 6 a.m. and 6 p.m. in the presence of two or more credible witnesses, and according to the rules, certain rites and ceremonies of the church, denomination or body to which the minister belongs (*n*); on celebration the marriage is at once registered by the official, and a duplicate of the certificate is within seven days of the marriage sent to the provincial registrar (*o*).

No minister is compelled to solemnize a marriage between persons neither of whom belongs to his church nor otherwise than according to the rites, &c. of the church (*p*).

Civil ceremony.]—Marriage may be solemnized in the presence of the registrar at his office between 6 a.m. and 6 p.m. with open doors in the presence of two

(*b*) *Valliammai v. Annamai* (1900), 4 Ceylon N. L. R. 8.

(*c*) See Armenopoulos, Hexabiblon (Bk. iv.), tit. 6, ss. 31—33, as to canon law of Eastern Church.

(*d*) *Rabot v. De Silva* (1909), A. C. 376, citing Ordinance No. 6 of 1847, s. 31, now incorporated in sect. 22 of the Ord. of 1907.

(*e*) As to bigamy, see Ord. No. 2 of 1883, s. 362. As to polygamy, see Ord. of 1870, No. 3, ss. 26, 27.

(*f*) This overrides the Dutch-Roman Law (see ii. Pereira, 88). As to kidnapping women to compel marriage, see No. 2 of 1889, s. 357.

(*g*) A legal marriage legitimizes the children of the parties procreated before marriage unless procreated in adultery (sect. 22).

(*h*) Sect. 23.

(*i*) Ten days is the general time prescribed for residence, but in certain cases it is four days, and provision is made for non-residents who come to Ceylon to marry (sect. 22).

(*k*) Sect. 29.

(*l*) Sect. 26.

(*m*) Sects. 27, 29—31.

(*n*) Sects. 28, 29—31.

(*o*) Sects. 3, 32, 33.

(*p*) Sect. 33 (7).

or more respectable witnesses. The prescribed formula includes a statement that the proposed marriage will create the tie of wedlock and a warning as to the penalties for bigamy. The marriage is registered as soon as celebrated (*q*).

Where the intended wife is of a class of people to whose habits and feelings it is contrary to require their females to appear in public before wedlock, a special licence from the Registrar-General, &c. may authorise the registrar to solemnize the marriage at such place and hour as the parties may prefer (*r*).

Marriage in articulo mortis.]—Marriage by a minister of the Christian religion without the formalities required by the ordinance is allowed where one of the parties is believed to be on the point of death, provided that he or she is of sound mind, memory and understanding. The minister must at once register the particulars, and attach an attested statement as to the condition, sanity, &c. of the sick person, and transmit a duplicate of the entry within twenty-four hours to the provincial registrar (*s*).

Dissolution.]—No marriage under the Act of 1907 may be dissolved (*t*) during the lifetime of the parties, except by judgment of divorce *a vinculo matrimonii*, pronounced by some competent Court, and founded on the ground (1) of adultery subsequent to marriage; or (2) of malicious desertion; or (3) of incurable impotency at the time of the marriage (*u*).

Mohammedans.]—By Ordinance No. 8 of 1886 power is given to grant licences to Mohammedan officers (*levvais*), who are to register all Mohammedan marriages when they attend the ceremony at the request of the parties. Registers are provided by the State, and are to be filled up and signed by the bridegroom and the lawful representative (*wali*) of the bride, and two witnesses present at the marriage (sect. 6).

The ordinance contained provisions, repealed in 1888 (*x*), rendering marriage void if knowingly and wilfully celebrated under false names, or knowingly and wilfully registered by an unlicensed *levvai*, and making the certificate of registration the best evidence of the marriage.

Kandyans.]—Marriages of Kandyan natives in the Kandyan provinces (*y*) (who are Buddhists) are governed (*a*) by Kandyan law and custom as fixed in 1815, when the provinces were taken over (*y*); (*b*) by the ordinances; (*c*) by Roman-Dutch law where the customs or the ordinances are silent.

The Kandyan Marriage Ordinance No. 3 of 1870 regulates marriages contracted by and between residents in the Kandyan provinces (*z*), other than marriages under the ordinances in force in the maritime provinces, or between persons commonly known as Europeans and their descendants, or persons commonly known as burghers, or marriages between any such persons and any Sinhalese, whether of the maritime or Kandyan provinces, or marriages between persons professing the Mohammedan faith (*a*) (sect. 4).

Nonage.]—A marriage is not valid if the man is under sixteen or the woman under twelve, but if the husband and wife have continued to cohabit after reaching the prescribed age, or if a child is born to them during nonage, the marriage ceases to be impeachable on the ground of nonage (sect. 12).

The consent of parent or guardian is required if the male party is under eighteen or the female under sixteen, if they have not been emancipated by previous marriage (sect. 13).

Consanguinity.]—The degrees of consanguinity are the same as under the Ordinance of 1907, *ante*, p. 308.

(*q*) Sects. 34 (5), 35.

(*r*) Sect. 36.

(*s*) Sect. 38.

(*t*) Sect. 20. This does not apply to Mohammedan marriages: and the grounds for dissolving Kandyan marriages are not the same. See Ord. 1870, No. 3, s. 23.

(*u*) As to actions of nullity, see Ord. No. 2 of 1889, s. 607.

(*x*) 1888, No. 2, ss. 2, 3.

(*y*) These provinces were ceded 2nd March, 1815, under a convention which saved their existing laws and institutions.

(*z*) Not including immigrant Tamils (*Narayana v. Muttusamy*, 3 Ceylon Sup. Ct. Rep. 125).

(*a*) See Pereira, *Inst. Laws of Ceylon*, vol. i. p. 16.

Celebration.—Notice of intention to marry is given to a registrar of the district or districts in which the parties dwell, and is published by being affixed conspicuously in the registrar's office (sect. 17). If the marriage is not forbidden (sect. 18), the registrar may register it at his office between 8 a.m. and 6 p.m.; after requiring the necessary particulars, and asking the parties in their native language whether they take each other in wedlock (sects. 19, 20) (*b*), he registers the marriage in the prescribed form (sect. 20).

C. HONG KONG.

This possession is subject to the laws of England as they existed on 5th April, 1843, save so far as they are inapplicable to the local circumstances of the colony or of its inhabitants (*c*), or are varied by subsequent imperial legislation or local ordinances.

The following ordinances are in force as to marriage:—

- 1875. No. 7. Celebration and registration (*d*).
- 1891. No. 4. Licence of a particular church.
- 1893. No. 3. Marriage *in articulo mortis* (*e*).
- 1896. No. 14. Amends 1875, No. 7.
- 1902. No. 15. Amends 1875, No. 7, as to searches, fees, &c.
- 1903. No. 6. Foreign Marriage. See Order in Council, 12th March, 1903 (*ante*, p. 126).

No marriage in the colony is valid which would be void on the ground of kindred or affinity in England or Wales (*f*).

Bigamy in the English sense of the term is punishable (*g*).

The local ordinances "apply to all marriages where neither of the parties has an undivorced husband or wife living" (except marriages between persons *neither* of whom professes the Christian religion), duly celebrated according to the personal law and religion (*h*) of the parties (*i*).

Notices.—One of the parties intending to marry under the ordinance must give a notice, signed by him or her, to the Registrar-General (*k*). An affidavit is required—(1) that there is no impediment of kindred or alliance, or other lawful hindrance; (2) either that all consents required by law have been given or that none is needed (*l*). The consents needed are in substance the same as in England (*m*).

The registrar issues his certificate not less than fifteen days, nor more than three months, after receipt of the notice (*n*); or, in case of a licence, by the Governor on or after any day named in the licence (*o*).

The marriage may be celebrated before the Registrar-General in his office after the parties have signed a written declaration in his presence, declaring that the parties understand that the ceremony constitutes a legal marriage,

(*b*) There are two kinds of marriage under Kandyan usage (sect. 20; and see Vocabulary of Kandyan Law, by Lemesurier and Pa'naboke, p. 17); but a marriage under the ordinance is monogamous (sect. 26), subject to powers of dissolving it for specified reasons (sect. 23).

(*c*) Ord. No. 3 of 1875, s. 5. See Hong Kong. Rev. Ordinances (ed. 1904), vol. i. p. 316; and Journ. Comp. Leg. Soc. vol. i. (O. S.) p. 154.

(*d*) 1 Rev. Ord. 346.

(*e*) 2 Rev. Ord. 97.

(*f*) 1875, No. 7, s. 26 (1), which in substance adopts Lord Lyndhurst's Act (*ante*, p. 81). *Quære*, whether the ordinance refers to the law of England as at the date of the marriage, or as of the date of the ordinance.

(*g*) Ord. No. 2 of 1865, s. 46 (1 Rev. Ord. p. 158), adapted from 24 & 25 Vict. c. 100, s. 57.

(*h*) See *ante*, pp. 302, 303 (British India).

(*i*) 1875, No. 7, s. 37.

(*k*) *Ibid.* s. 5.

(*l*) *Ibid.* ss. 12, 18.

(*m*) *Ibid.* ss. 13—17.

(*n*) *Ibid.* s. 8. The notice is exhibited at his office or such other public place or places as he selects (sect. 6 and Ord. No. 15 of 1902).

(*o*) *Ibid.* s. 9.

dissoluble only by death or judgment of divorce, and that to contract another marriage is punishable as bigamy (*p*).

The marriage may be celebrated in any licensed place of worship (*q*), by any competent minister of the church to which the place of worship belongs, according to the rites or usages of marriage observed in such church, provided that it is celebrated with open doors, and (unless by special licence) between 6 a.m. and 6 p.m., and in the presence of two or more witnesses besides the officiating minister, who may not, however, celebrate a marriage until he has received from the parties the Registrar-General's certificate or the Governor's special licence (*r*).

A marriage is null and void if *both* parties *knowingly* and wilfully acquiesce in its celebration—

In any place other than the office or a licensed place of worship (unless by special licence); or

Under a false name or names; or

Without a certificate of notice or licence duly issued; or

By a person not being a competent minister or the Registrar-General or his deputy (*s*).

Ministers celebrating marriage must transmit a certificate in the prescribed form within seven days after celebration, and the certificates are filed by the Registrar-General (*t*).

By Ordinance No. 3 of 1893, any competent minister may celebrate a marriage (without the registrar's certificate or Governor's licence) between two persons who have lived in unlawful concubinage, of whom one is *in articulo mortis*, subject to the following conditions:—

- (a) Both parties must be able to signify their consent, and do so in the presence of at least two witnesses;
- (b) If either party is under twenty-one, and not a widower or widow, the persons whose consent is required must be present and verbally consent;
- (c) The parties must not be within the prohibited degrees of kindred or affinity;
- (d) A certificate of the marriage must be lodged with the registrar by the minister within seven days of the marriage, signed by the minister, and if practicable by the parties and by the witnesses.

A marriage *in articulo mortis* does not revoke the will of either party (*u*).

D. CHINA AND COREA.

(i) WEI HAI WEI.

1901, July 24. Wei Hai Wei Order in Council, 1901. { St. R. & O. Rev. 1904,
1903. Wei Hai Wei Order in Council, 1903. { Vol. V. tit. Foreign
Jurisdiction, p. 283.

Ordinance No. 9 of 1903, as to marriage, is an adaptation to the Protectorate of the Hong Kong Marriage Ordinances of 1875 and 1893, with merely formal differences. The ordinance does not apply to marriages between non-Christians (sect. 40), and the English rules as to consanguinity and affinity (sect. 28), and consents (sect. 13), are adopted.

(ii) REST OF CHINA.

British jurisdiction in the rest of China is regulated by the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37), and Orders in Council made thereunder (*x*). Marriages in China fall within the Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23) (*y*).

(*p*) Sect. 21, Form 6.

(*q*) Churches are licensed by the Governor (sect. 3); and see Ord. No. 4 of 1891.

(*r*) Sect. 19.

(*s*) Sect. 26.

(*t*) Sects. 23, 30. The certificate is admissible as evidence (sect. 24). Provision is made for correcting errors (sect. 25).

(*u*) Sect. 3.

(*x*) See China and Corea Order in Council, 24th October, 1904.

(*y*) *Ante*, p. 119.

(iii) COREA.

British matrimonial jurisdiction in Corea rests on the same Acts and Orders as in China.

E. JAPAN.

The foreign jurisdiction of the British Crown in Japan has ceased, and marriages of British subjects in that country must now be celebrated under municipal laws of Japan, or the Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23) (z), or they will not be valid under English law.

F. THE STRAITS SETTLEMENTS (a) AND LABUAN (b), AND FEDERATED MALAY STATES (c).

(i) *Straits Settlements.*

By letters patent of 27th November, 1826, the English common law as of 1826 was applied to the Straits Settlements "so far as local circumstances will permit" (d).

Until 1866 the Settlements were treated as part of India, and Indian legislation was applied to them (e).

The Supreme Court has the jurisdiction of an Ecclesiastical Court in England as of 1855 (f), so far as the religious manners and customs of the possession permit; but has no jurisdiction to grant divorce *à vinculo* (g). In questions of marriage and divorce, the English law has been held inapplicable to Mohammedans, Hindus, Buddhists (h) and Chinese (i).

The following Indian and local legislation is in force as to marriage.

Indian Acts.

No. XV. of 1856. Hindoo widows.

Nos. XV. and XXI. of 1865. Parsi marriage and divorce.

Local Ordinances.

1898. No. III. Christian marriage (k).

1903. No. XXV. Christian marriages amendment (foreign marriages) (*vide ante*, p. 126).

1908. No. XXV. (Mohammedan marriage).

1909. No. VII. (Christian marriages).

1909. No. XVII. (Mohammedan marriages).

(z) *Ante*, p. 119. See Regulations, St. R. & O. (1906), No. 962.

(a) These now include the Cocos Islands (Order in Council, 1st February, 1886, and 20th May, 1903; St. R. & O. (1903) No. 478), Christmas Island (Order in Council, 8th January, 1889), and Labuan. See note (c), *infra*.

(b) Included in Straits Settlements by letters patent of 30th October, 1906 (St. R. & O. (1906), p. 890), brought into force by proclamation of the Governor of Labuan as from 1st January, 1907. The law of the Straits Settlements, with specified exceptions, is extended to Labuan by Straits Settlements Ordinances of 1907, Nos. 1, 35.

(c) *Vide post*, p. 315.

(d) See *Ong Cheng Neo v. Yeap Cheng Neo*, L. R. 6 P. C. 381, 392; Journ. Comp. Leg. Soc. (O. S.) vol. i. p. 187, *per* Cox, C. J.; Napier's Introduction (1898), c. vi.

(e) 29 & 30 Vict. c. 115, Order in Council, 28th December, 1866 (St. R. & O. Revised (ed. 1904), vol. xi. tit. Straits Settlements).

(f) Letters Patent, 10th August, 1855 (Ord. iii. of 1878, ss. 10, 13).

(g) *Scully v. Scully* (1890), 4 Kyshe, 602.

(h) *Choa Chun Neoh v. Spottiswoode* (1869), 1 Kyshe, 216, 221; approved by J. C., in *Ong Cheng Neo v. Yeap Cheng Neo*, *ubi sup.*

(i) *Lin Chooi Hoon v. Chok Yoon Guan* (1892), 1 Str. Sett. L. R. 76.

(k) Superseding the Indian Marriage Act, No. xv. of 1865, and the Marriage Registrars Ordinance (No. iii. of 1880), except sects. 25, 26, which relate to searches and extracts. Ord. No. vii. of 1909 provides for certain amendments rendered necessary by their repeal.

Christian Marriages.

Celebration.]—The Ordinance of 1898, No. iii., declares void marriages solemnized in the Settlements between persons, one of whom is a Christian, otherwise than under the ordinance (sect. 3).

By sect. 4 marriages may be solemnized—

- (a) By an episcopally ordained person, according to the rites of the church of which he is a member (*l*);
- (b) By a clergyman of the Church of Scotland, according to the ceremonies and customs of that church;
- (c) By a minister of the Presbyterian Church of England, whose appointment as such is gazetted;
- (d) By any minister of religion licensed under the ordinance to solemnize marriages; or
- (e) In the presence of a marriage registrar appointed under the ordinance.

Capacity.]—Capacity to contract a Christian marriage in the Straits Settlements appears to depend on the law of England as applied to the colony, and not on the personal law or religious persuasion of the parties.

Prohibited degrees.]—Impediments of kindred or affinity are referred to but are not defined (sects. 17, 39). This seems to leave standing the law of England as of 1826 (*m*), and not to introduce the Indian rule (*n*).

Special provisions are made for ensuring that the documents and proceedings relating to a marriage under the ordinance are understood by native Christians and by natives of Asia who are not of European descent.

Mohammedan marriages.]—Provision is made by ordinances of 1908 (*o*) and 1909 (*p*) for the registration of Mohammedan marriages (*q*) and divorces.

The Governor may appoint for each Settlement a registrar of Mohammedan marriages (*r*). He may also appoint male Mohammedans of good character and position and suitable attainments to be Kathis (cadis). Two or more may be appointed for the same district or place. The appointment states whether the appointee is for a particular nationality or sect (*s*).

The kathis are deputy registrars of Mohammedan marriages (*r*).

Registration of marriages, divorces or revocations of divorce (*t*) of Mohammedans is compulsory (*u*). The husband must attend personally within seven days after the marriage, &c. at the office of the proper kathi (of the residence or of the nationality or sect, of the parties) and must supply the necessary particulars (*y*). The kathi at his option may register the marriage, &c. at the house of the parties (*z*). He may register the marriage, &c. at any time within one month of its taking place (*a*), after making such inquiries as he deems needful to satisfy him that the marriage, &c. is valid (*b*).

(*l*) Cf. *ante*, p. 304 (British India).

(*m*) Thus excluding Lord Lyndhurst's Act (*ante*, p. 81) and 7 Edw. 7, c. 47 (*ante*, p. 162).

(*n*) *Ante*, p. 305.

(*o*) No. xxv., consolidating and repealing the former Ordinances of 1880 (except sect. 27), 1894, and 1902.

(*p*) No. xvii., amending the Ord. of 1908 in details.

(*q*) By sect. 27 of the Ord. of 1880 (No. v.), which is still in force, certain modifications in the laws of property of the Straits Settlements are recognized in the case of Mohammedan marriages.

(*r*) 1908, s. 4.

(*s*) *Ibid.* s. 5, as amended by 1909, s. 2.

(*t*) These forms of divorce are dealt with in detail in the Ordinance of 1908. See also Wilson, *Anglo-Mohammedan Law* (3rd ed.) 143; Ameer Ali, *Mohammedan Law*, vol. ii. 513, 546.

(*u*) 1908, s. 6. The procedure is regulated by sects. 8—16.

(*y*) Sect. 7 (1).

(*z*) Sect. 7 (2).

(*a*) Sect. 8.

(*b*) Sect. 9.

The entries in the register are signed by the kathi, the parties and such number of witnesses as may be prescribed by rules (c).

Nothing in the ordinance renders "valid or invalid merely by reason of its having been or not been registered, any Mohammedan marriage or divorce which would otherwise be invalid or valid," nor does the ordinance authorise or require the attendance of any kathi at the celebration of a marriage, except at the request of the parties concerned (d). And the British Courts of the colony have no jurisdiction to interfere with Mohammedan judges who decree divorces by the Mohammedan law (e).

Chinese marriages.—There is no local legislation as to marriages according to Chinese rites, between persons of Chinese race, whether subjects of the king or otherwise (f); and there is some uncertainty as to the effect under the local law of such marriages. They seem to be accorded a qualified validity (g); but such marriages, even between Chinese who are natural born British subjects, do not give the husband the *jus mariti* which he had by the common law of England over the wife's property (g). Chinese divorce is not considered as a bar to subsequent marriage in the colony (h).

Hindu marriages.—There is no legislation on the subject except the Indian Act No. xv. of 1856 as to the remarriage of widows (i).

(ii) *Federated Malay States.*

(a) NEGRI SEMBILAN (including SUNGEI-UJONG).

The Christian Marriage Enactment (No. 4 of 1902), is an adaptation of the Straits Settlements Ordinance No. iii. of 1898. The enactment does not apply to marriages before a foreign consul between subjects of the State which he represents, and according to laws of that State (sect. 70); nor does it validate any marriage which the *personal law* (k) of either party forbids him or her to contract (sect. 71).

Mohammedan marriages are registered under Ordinance No. 5 of 1900.

(b) PERAK.

The Christian Marriage Enactment, No. 3 of 1902, is an adaptation of the Straits Settlements Ordinance, No. iii. of 1898.

Sects. 70, 71, are in the same terms as the Negri Sembilan Ordinance.

Mohammedan marriages and divorces are registered under Enactment No. 2 of 1900, which requires Mohammedans to report and register divorces with the kathi (kadi).

(c) SELANGOR.

Christian marriages are registered under a Regulation (No. 3) of 1896.

(c) Sect. 8.

(d) 1908, s. 29.

(e) *Adoomch Kahab v. Lebby Dan* (1878), 1 Kyshe, 438.

(f) *Lin Chooi Hun v. Chok Yoon Guan* (1892), 1 Straits Settlements L. R. 72. The Chinese marriage law recognizes polygamy (*ibid.* 75; *R. v. Yeoh Boon Leng* (1890), 4 Kyshe, 630.

(g) *Lin Chooi Hun v. Chok Yoon Guan*, *l. c.* p. 76. There is a very recent decision on the subject, but the report has not yet reached England.

(h) *Nonia Chea Yew v. Othman Saw Merican* (1861), 1 Kyshe, 160.

(i) *Ante*, p. 302.

(k) *Vide ante*, pp. 302—305 (British India).

AUSTRALASIA AND POLYNESIA.

(A) *Commonwealth of Australia.*

The Commonwealth Parliament has power, subject to the constitution (*a*), to make laws for the peace, order and good government of the Commonwealth, with respect to—

(xxi) Marriage; and

(xxii) Divorce and matrimonial causes; and, in relation thereto, parental rights and the custody and guardianship of infants.

Laws relating to this subject will, it would seem, embrace—

(1) The establishment of the relations, including preliminary conditions, contractual capacity, banns, licences, consent of parents or guardians, solemnization, evidence and rules in restraint; and

(2) The consequences of the relation, including the status of the married parties, their mutual rights and obligations, the legitimacy of children, and their civil rights (*b*).

(xxii) was deliberately introduced to avoid the conflict of laws so painfully evident in the United States (*c*).

It has not been decided whether the above powers are exclusive or concurrent, but the State Parliaments treat the power as concurrent.

The Commonwealth Parliament has not yet legislated, and difficulties as to domicile still arise (*d*).

Subject to the legislation of particular States, the marriage law of Australia rests on the English law, including the table of prohibited degrees (*ante*, p. 14) (*e*). Lord Lyndhurst's Act (*ante*, p. 81) is not in force in New South Wales (*f*), Queensland (*g*), Tasmania or Victoria (*h*), but the civil Courts in those States have power to declare void a marriage within the prohibited degrees (*i*).

(B) *Australian States.*(i) NEW SOUTH WALES (*k*).

The statute law of the State as to marriage and matrimonial causes was consolidated in 1899 (Acts Nos. 14 and 15).

Prohibited degrees.]—The prohibited degrees of consanguinity and affinity are those of the original English table (*ante*, p. 14), except that marriage with a deceased wife's sister was legalised in 1876 (*l*).

Consents.]—The marriage of a person under twenty-one (not being widower or widow) may not take place without production of the written consent (1) of the father, or of a guardian appointed by him if he is absent from New South Wales; (2) of the mother if within New South Wales, if there is no such guardian; (3) of a justice of the peace, where there is no such parent or guardian in New South Wales, or he or she cannot consent by reason of habitual intoxication, mental incapacity, or distance (*m*). Where a marriage

(*a*) Commonwealth of Australia Constitution Act, 1900 (63 & 64 Vict. c. 12), chap. I. Pt. v. s. 51.

(*b*) Garran and Quicke, Australian Constitution, p. 608, and Hist. Note, sub-s. xxi.

(*c*) *Ibid.* 610.

(*d*) *Parker v. Parker* (1908), 5 Australian C. L. R. 691. *Quære*, whether husband's domicile was in Victoria or New South Wales.

(*e*) *Miller v. Major* (1906), 4 Austr. C. L. R. 219; (1906) 6 N. S. W. State Rep. 24.

(*f*) *Ibid.*

(*g*) *Re Kreutz*, 4 Queensland L. J. 16.

(*h*) *Smith v. Smith*, 29 Victoria L. R. 98.

(*i*) *Miller v. Major*, *ubi sup.*; cf. *ante*, p. 254 (Ontario).

(*k*) The marriage laws of England were part of the law of the colony on its first settlement (*Miller v. Major*, 4 Austr. Comm. L. R. 219; and see 1 Journ. Comp. Leg. Soc. (1897), p. 164).

(*l*) 39 Vict. No. 20.

(*m*) 1899, No. 15, ss. 9, 10.

is celebrated on such consent, a statement of the fact of consent is to be indorsed on the certificate by the officiant (*n*).

Celebration.]—No marriage may be validly celebrated except (1) by a minister of religion, ordinarily officiating as such, whose name, designation, and residence are registered in the office of the Registrar-General for marriages; (2) by a district registrar (*o*).

No provision is made as to banns or licences; but no marriage may be celebrated until the parties have, in the presence of the officiant minister or registrar, signed a sworn declaration of age (or minority and consent), and of absence of impediments to the marriage (*p*). This declaration is indorsed on the marriage certificate.

The Act is silent as to the ceremonies to be used by a minister of religion.

Marriages before the district registrar may be celebrated where the parties sign a declaration of conscientious objection to being married by a minister of religion, or that no minister of religion is accessible (*q*). The marriage is, by signing before the registrar a declaration, by both parties, that each takes the other as his lawful wife or her lawful husband (*r*).

Two witnesses are essential, whether the marriage is civil or religious (*s*).

After the marriage a certificate in the prescribed form (with the declaration indorsed) is signed by the minister or registrar, the spouses and the witnesses (*t*). The parties receive a copy, and the minister must transmit the original certificate to the district registrar (*u*).

Irregularities.]—A marriage is not avoided by celebration by a person not a minister of religion, if one of the parties *bonâ fide* believed him to be so, nor by non-registration of the officiant minister, nor by defect or error in the declaration, where the identity of the parties is not in question, or by omission of either party to make the declaration (*x*).

Validation.]—The Act validates certain marriages prior to 1899 (*y*).

Legitimation.]—Children born out of wedlock may be legitimated on the subsequent marriage of their parents (*z*).

Divorce.]—The grounds of divorce in New South Wales are more numerous than in England, including simple adultery by the husband, habitual drunkenness and neglect of duties by either spouse, attempt to murder the other spouse, and imprisonment for three years or more for crime. The jurisdiction of the Court in respect of the non-English grounds is guarded by requiring three years' domicile in New South Wales (not acquired for the purposes of divorce) (*a*).

(ii) QUEENSLAND (*b*).

The marriage legislation of this State is contained in Acts of 1864, 1870, 1872, 1877 and 1899 (*c*).

Marriage cannot be lawfully celebrated except (1) by a minister of religion ordinarily officiating as such who is registered in the office of the Registrar-

(*n*) Sect. 11.

(*o*) *Ibid.* ss. 3—6. The Act does not apply to the marriage of Quakers or Jews, except by requiring the transmission within ten days of such marriage to the registrar of the district in which it took place of a certificate of the date, place, and parties (sect. 20).

(*p*) *Ibid.* s. 5 (1) (3), Sched. 4.

(*q*) *Ibid.* s. 3 (2), Sched. 2.

(*r*) *Ibid.* s. 3 (2), Sched. 3, and sect. 24.

(*s*) *Ibid.* s. 4.

(*t*) *Ibid.* s. 5 (4).

(*u*) *Ibid.* s. 7.

(*x*) *Ibid.* ss. 12—15.

(*y*) *Ibid.* ss. 16, 17, 19.

(*z*) 1902, No. 23.

(*a*) 1899, No. 14, ss. 12—16.

(*b*) This State was part of New South Wales till 1859, and subject to the same laws. See Journ. Comp. Leg. Soc. (O. S.), vol. i. (1897), p. 170.

(*c*) The Act of 1864, ss. 22, 23, validates certain earlier marriages by ministers of religion.

General (*d*); or (2) by a registrar of marriages for the district in which the intended wife ordinarily resides (*e*); or (3) by a justice of the peace authorised to celebrate marriage (*f*).

Before a marriage is celebrated, both parties must make an oath before a surrogate for licences or the officiating minister or registrar a declaration of no impediment (*g*).

Prohibited degrees.]—The prohibited degrees of kindred and alliance are the same as in England (*ante*, p. 14). Marriage with a deceased wife's sister was legalised in 1877 (*h*).

Consents.]—Where either party is under twenty-one and not a widower or widow, the marriage may not be celebrated without production of the written consent of the father or guardian as in England. When a marriage is solemnized with such consent, the fact is endorsed on the certificate (*i*).

Celebration.]—There is no provision as to marriage notices, banns, or licences. Their place is taken by the declaration already mentioned and the power of the officiant to require information as to the details necessary for registration (*k*).

Marriage before a minister or registrar must be celebrated between 8 a.m. and 8 p.m. (*l*); before justices, must be between 8 a.m. and 6 p.m. (*m*).

No place or formula is prescribed for marriages by a minister. The registrar must celebrate marriages in the office publicly used by him for his general duties and with open doors (*n*). A justice must celebrate, if possible, in an office ordinarily used by him for the dispatch of public business and with open doors, and may not celebrate in a "public-house" (*o*).

Where the marriage is before a registrar, the parties must sign a declaration of conscientious objection to marriage by a minister, or that a minister is not accessible (*o*), and must repeat and sign a declaration in the presence of the registrar (*p*) that each takes the other to husband (or wife).

Where the marriage is before a justice, the same declarations are made (*q*).

At all marriages, however, two witnesses must be present (*r*).

The marriages of Jews and Quakers are not governed by the Act, but a certificate of such marriage must be transmitted to the Registrar-General within ten days of celebration (*s*).

As soon as the marriage is celebrated, a certificate is drawn up and signed by the parties, the two witnesses, and the minister, registrar, or justice. A copy is given to the parties, and the minister or justice must within a month send the original to the registrar of the district (*t*).

A copy of the registry of a marriage in the office of the Registrar-General under his hand is receivable as evidence, in all proceedings civil and criminal, of the fact of the marriage having been duly celebrated, unless and until the contrary is shown (*u*).

Marriages under the above Acts are not invalidated by defects or errors in

(*d*) 1864, ss. 2—8.

(*e*) Sect. 9.

(*f*) 1872, No. 12. This Act empowers the Governor in Council to appoint justices to celebrate marriages within specially defined districts.

(*g*) Of kindred or alliance, want of consent of parents, &c., or other lawful cause (sect. 10 and Sched. (C)).

(*h*) 41 Vict. No. 25.

(*i*) 1864, ss. 18—20, which are substantially the same as the New South Wales law.

(*k*) 1864, s. 15.

(*l*) *Ibid.* s. 11.

(*m*) 1872, s. 4.

(*n*) 1864, s. 11.

(*o*) 1872, s. 3.

(*p*) 1864, s. 9.

(*q*) 1872, s. 5.

(*r*) 1864, s. 14.

(*s*) *Ibid.* ss. 16, 17.

(*t*) *Ibid.* s. 14; 1872, s. 6.

(*u*) *Ibid.* s. 24.

the declaration before marriage if the identity of the parties is not in question (*x*); nor by defects in the appointment of a registrar or his deputy (*y*).

A child born before the marriage of his or her parents, and whether before or after 23rd December, 1899, if the parents intermarry, is on registration in the prescribed manner to be deemed to have been legitimated by such marriage from birth, and entitled to all the rights of a child born in wedlock (*z*). The registration is effected by a statutory declaration by the father (*a*).

(iii) PAPUA (*b*).

The principles and rules of the common law and equity for the time being in force in England, are to apply in Papua (*c*) subject to the original or adopted law of the possession.

The local legislature has adopted the following Queensland Acts as to marriage:

The Deceased Wife's Sister's Marriage Act of 1877 (41 Vict. No. 25).

The Marriage Act of 1864 (28 Vict. No. 15).

The Marriage Law Amendment Act of 1870 (34 Vict. No. 8).

The Justices Marrying Act of 1872 (36 Vict. No. 12).

The Registration of Births, Deaths, and Marriages Act, 1856 (19 Vict. No. 34, New South Wales) (*d*).

For these Acts see Queensland (*ante*, pp. 317, 318).

There does not appear to be any other legislation on this subject.

(iv) SOUTH AUSTRALIA (*e*).

Prohibited degrees.]—The prohibited degrees are as in England (*ante*, p. 14). Marriage with a deceased wife's sister was legalised in 1870 (*f*).

Celebration.]—The statute law as to celebration rests on Acts of 1867 (*g*) and 1882 (*h*).

The only persons who may celebrate marriages are—

(1) Ministers of religion duly enrolled on a roll kept by the Registrar-General (*i*), or officiating registrar enrolled for districts where there are no ministers (*k*); and

(2) The Registrar-General, the deputy registrar of marriages, and all district registrars (*l*).

A licence or certificate is necessary for the celebration of a marriage, and must be produced before it is celebrated (*m*).

A marriage may be celebrated in the place and between the parties described in the licence or certificate, by the Registrar-General or his deputy, a district

(*x*) 1864, s. 21.

(*y*) 1870, s. 3.

(*z*) 1899 (63 Vict. No. 11), s. 3. The Act does not apply if at the time of the child's birth there was any legal impediment to the marriage of the parties (sect. 6).

(*a*) *Ibid.* s. 7.

(*b*) Formerly the colony of British New Guinea, now a territory of the Commonwealth of Australia. It is under the English common law. See Ord. No. 11 of 1889; 1 Journ. Comp. Leg. Soc. (1897), p. 375.

(*c*) Ord. No. vi. of 1889, s. 4.

(*d*) *Ibid.* Sched. (A).

(*e*) This State is under the common law, &c. of England, as of 1836, as modified by subsequent colonial legislation (2 Journ. Comp. Leg. Soc. (1897), p. 278).

(*f*) 33 Vict. (No. 4).

(*g*) 31 Vict. (No. 15), repealing prior colonial legislation on the subject.

(*h*) 55 & 56 Vict. (No. 243).

(*i*) 1882, s. 6. For procedure as to enrolment, &c. see 1867, ss. 9—14.

(*k*) 1867, ss. 11, 15.

(*l*) *Ibid.* s. 15.

(*m*) *Ibid.* ss. 16, 28.

registrar, officiating registrar or officiating minister named in the licence or certificate.

The celebration must be with open doors in the presence of two or more witnesses. A minister of religion may use the forms of the religious body to which he belongs, and his signature to the certificate of marriage is conclusive that he did so (*n*). In a marriage before the Registrar-General, &c. there is a prescribed form of mutual declaration made and signed by the parties that they take each other in marriage (*o*).

Before the marriage is celebrated, both parties must make or sign the prescribed declaration of no impediment and consents (*p*).

Certificates for marriage are obtained by giving notice to the Registrar-General, deputy-registrar of marriages or a district registrar (*q*).

The notices are verified if need be, and entered in the marriage notice book (*r*). When fourteen days have elapsed from the giving of the notice, the official issues a certificate for marriage if no lawful cause against its issue has been shown (*s*).

Licences for marriage may be granted by the Registrar-General, the deputy-registrar for marriages and district registrars, and also by all officiating ministers and officiating registrars (*t*).

Where either party is under twenty-one, not being a widower or widow, certificates or licences are not to issue without production of the written consent of parent or guardian, or dispensation with the consent by the registrar, minister, &c. on his being satisfied that the parent or guardian is not resident in the State, or that there are other satisfactory grounds for not obtaining the consent (*u*).

The certificates and licences are only good for three months from the date of issue (*x*).

There is no separate provision as to Quaker marriages (*y*).

For a time registration was made conclusive evidence of the validity as well as the fact of marriage (*z*).

Legitimation.—Children may be legitimated by the subsequent marriage of their parents, if the father after the marriage registers them as his in the prescribed manner (*a*).

(v) TASMANIA (*b*).

The statute law of this State as to marriage is contained in the consolidating and amending Marriage Act, 1895 (59 Vict. No. 23) (*c*), amended in 1896 (60 Vict. No. 13), and 1906 (6 Edw. 7, No. 19).

Consents.—The law as to consents to the marriage of minors is substantially the same as in England, subject to the power given to a judge of the Supreme Court to grant consent when the parent, &c. unreasonably withholds it (*d*). Want of the consents appears not to invalidate the marriage (*e*).

(*n*) 1882, s. 12.

(*o*) *Ibid.* s. 5.

(*p*) *Ibid.* s. 11.

(*q*) *Ibid.* s. 7.

(*r*) 1867, s. 19.

(*s*) 1882, s. 8.

(*t*) *Ibid.* ss. 9, 10, Sched. 3.

(*u*) *Ibid.* s. 25, *e.g.*, father not found as a lunatic. See form of licence (1882), Sched. IV. As to *caveats*, see (1887) sects. 26, 27.

(*x*) 1867, s. 30.

(*y*) See 1868, s. 2, repealing a prior Act of 1864.

(*z*) 1867, s. 38, repealed in 1868 (No. 5), s. 1.

(*a*) 1898, No. 703; 1902, No. 793.

(*b*) Tasmanian Statutes, vol. iii. p. 1614.

(*c*) *Ibid.* p. 1629.

(*d*) 1895, ss. 27, 28.

(*e*) *Ibid.* s. 41.

Prohibited degrees.—The English table of prohibited degrees (*ante*, p. 14) is in force in Tasmania. Marriage with a deceased wife's sister was legalised in 1874 (*f*).

Celebration.—The only persons who may celebrate marriage are (1) ministers of religion whose names, &c. are registered with Registrar-General (*g*); (2) the Registrar-General of Marriages, and registrars of marriages (*h*).

Persons who object to marriage before a minister of religion, or registrar, may mutually contract and celebrate marriage between themselves in the presence of two or more witnesses and a marriage registrar, after obtaining a registrar's licence or certificate, and using a prescribed formula calling those present to witness that the parties take each other as husband and wife (*i*).

Before a marriage can be celebrated, the parties must obtain a licence from an officiating (*i.e.*, registered) minister (*j*), or a licence or certificate from the Registrar-General, or a marriage registrar. In the case of licences no form of marriage notice or publication of banns is required; in the case of certificates a marriage notice must be given (*k*), and the certificate does not issue till seven days have elapsed from the date of the notice (*l*). Full provision is made for caveats, substantially in the same form as in the English Acts (*m*).

The marriage is celebrated at the place specified in the certificate, or licence, with open doors, in the presence of two or more witnesses, after signing a prescribed form of declaration (of no impediment, consents, &c.); and according to such form or ceremony as the parties may think fit to adopt (*n*), or in the case of an officiating minister according to the usage and the forms of the church or society to which he belongs (*o*). Marriages before a registrar take place at his office during usual business hours (*p*). There is no prescribed time for other marriages.

Marriage certificates are made out in triplicate, which are completed and signed after celebration. One copy is given to the parties, one sent to the Registrar-General, and the third kept by the official with the licence or certificate. The consent of parents, &c. is indorsed on the certificates of the marriage of a minor (*q*).

The Act of 1906 adapts the provisions of the New South Wales Act of 1899 (*ante*, p. 318), declaring marriages not to be void (1) if either party in good faith believed the officiant to be lawfully qualified as minister or registrar, or (2) by reason of omitting to make the prescribed declaration (*r*).

Legitimation.—Children born out of wedlock may be legitimated on the subsequent marriage of their parents (*s*).

(vi) VICTORIA.

The law as to marriage and divorce was consolidated by the Marriage Act, 1890 (54 Vict., No. 1166). It has since been amended in 1898 (No. 1582), 1900 (No. 1684), 1906 (No. 2062), and 1909 (No. 2192) (*ss*).

(*f*) 37 Vict. No. 7 (Tasmanian Statutes, vol. iii. p. 1614). The colonial Acts contain no other direct provision as to capacity or impediments.

(*g*) 1895 (No. 13), ss. 7 (1), 8—15, Sched. 2. The schedule includes Jews, Quakers, and the Salvation Army.

(*h*) Sects. 6, 7 (2).

(*i*) 1896, (No. 13), ss. 2, 3.

(*j*) 1895 (No. 23), ss. 16, 17 (1). All such ministers can grant the licence.

(*k*) Sects. 16, 17 (2), 18—20.

(*l*) Sect. 20.

(*m*) Sects. 29—31.

(*n*) If the marriage is by a registrar the formula of calling those present to witness that the parties take each other to husband and wife must be used (sect. 22 (3)).

(*o*) Sect. 22 (2).

(*p*) Sect. 22 (3).

(*q*) Sects. 33, 34.

(*r*) 1906 (No. 19), ss. 3—6.

(*s*) 1905, No. 3.

(*ss*) Until 1850 Victoria was under the laws of New South Wales (Journ. Comp. Leg. Soc. (N. S.), vol. ii. pp. 93—97).

Impediments.]—English table of prohibited degrees (*ante*, p. 14) applies. Marriage with a deceased wife's sister was legalised in Victoria in 1893 (*t*). Lord Lyndhurst's Act does not apply (*u*).

A person under twenty-one, who is not a widower or a widow, may not marry without the written consent in the prescribed form (*x*)—(a) of the father, if in Victoria; (b) of a guardian appointed by the father, if he is not in Victoria; (c) if there be no such guardian in Victoria, of the mother; (d) if there be no parent or guardian in Victoria, or if parent or guardian is incapable of duly assenting by reason of mental incapacity or some other substantial cause, by one of the justices (specially appointed by the Chief Justice) after inquiry on oath (*y*).

The consent of the mother is enough if the minor is living with her and under her care and control, if the mother has been deserted or has got a decree of nullity, divorce, or separation (*z*). When either party is a ward of the Department of Neglected Children the consent of the secretary of the department is necessary (*a*).

Marriage without the consents is valid even, it would seem, if celebrated on a false declaration (*b*).

Celebration.]—The only persons who may celebrate marriages are—

- (1) Ministers of religion whose names are registered in the office of the Government statist; and
- (2) The Government statist or any registrar of marriages (*c*).

In January of each year the recognized head in Victoria of any religious denomination must send to the statist a full list of the ministers of the denomination (registered or eligible) who are exercising the functions of officiating ministers and have not been degraded or deprived (*d*).

No minister of religion is registered as one who may celebrate marriages unless he is ordinarily officiating as a minister of religion in one of the religious denominations whose ministers were registered in 1898, or in a religious denomination subsequently declared by gazetted order of the Governor in Council to be a religious denomination for the purposes of the Marriage Acts (*e*).

No banns, certificate, or licence are required, but before a marriage is celebrated by a minister the parties must have given him written notice of their intention to marry at least three days before the celebration. Such notice may be dispensed with in the case of emergency by permission previously obtained from any justice (*f*).

No marriage may be celebrated until the parties have made before the minister or other officer a declaration (on oath or affirmation) in the prescribed form describing the parties and stating that there are no impediments and that any necessary consents have been given (*g*).

No time or place is prescribed for marriage by a registered minister, but the Governor in Council may prohibit the use for celebration of marriage of

(*t*) 36 Vict. (No. 453), reproduced in No. 1166, s. 18.

(*u*) *Vide ante*, p. 316.

(*x*) 1898, s. 28.

(*y*) 1890, ss. 14, 15, including police magistrates; 1898, ss. 26, 27.

(*z*) 1898, s. 25 (*a*).

(*a*) *Ibid.* sect. 25 (*b*).

(*b*) *R. v. Griffin*, 3 Victoria L. R. 278; *Gullifer v. Gullifer*, 6 Victoria L. R. (I. P. & M.) 109.

(*c*) 1898, s. 5.

(*d*) 1909, s. 5.

(*e*) 1898, s. 6. Sects. 5—17 supersede ss. 4—6 and 9 of the Act of 1890. Sects. 7—16 regulate the procedure for obtaining registration and for suspending a minister for certain offences and for cancelling registration. A minister who, in the opinion of the Chief Secretary, makes a business of celebrating marriages for profit or gain, irrespective of carrying out his ordinary duties, may be prohibited by Order in Council from celebrating marriages (1909, s. 4).

(*f*) 1909, s. 2.

(*g*) 1890, s. 10.

buildings which he deems to be unsuitable unless they are *bonâ fide* used for public worship (*h*).

In the case of marriage before the statist or a registrar, written notice is required, and the notice must be posted up outside the public office for at least three days before the marriage (*i*). The marriage must be celebrated between 8 a.m. and 4 p.m. in the public office of the statist or registrar with open doors (*k*), and the form is a declaration repeated in the presence of the officer and signed by the parties that they take each other to husband and wife (*l*).

All marriages must be celebrated in the presence of two or more witnesses of full age, and be registered according to law (*m*).

In the case of minors, the parental consent if given in writing is endorsed on the certificate (*n*).

On the certificate of marriage (*o*), which is made out in triplicate (*p*), must appear a statement of the ages of the parties if known (*q*).

A copy of the registry of any marriage in the office of the statist is *primâ facie* evidence of the fact of the marriage (*r*).

A marriage is not rendered invalid by absence or defect of authority in the registrar, or the minister, or his non-registration if the parties honestly believe the minister to be qualified, nor by defects or errors in the declaration (where the identity of the parties is not in question), nor by defect in the appointment of the magistrate who gives his consent to the marriage of a minor (*s*), nor by non-compliance with the provisions of the Act of 1898, sect. 9, or the Act of 1909, sect. 2 (*t*).

Jews and Quakers.]—The marriages of Jews and Quakers are not subject to the provisions above stated (*u*), but within three months of such a marriage a certificate thereof must be sent to the statist by the person celebrating or witnessing it or by one of the parties (*x*), and a list must be sent in each year of the persons eligible for registration for celebrating marriages who are exercising ministerial functions (*y*).

Legitimation.]—Children born out of wedlock may be legitimated on the subsequent marriage of their parents (*z*).

Divorce.]—The general rules as to divorce are contained in the Marriage Act, 1890, No. 1166.

(vii) WESTERN AUSTRALIA (*a*).

In this state Lord Lyndhurst's Act (5 & 6 Will. 4, c. 54) was adopted in 1844 (7 Vict. No. 13), but marriage with a deceased wife's sister, wherever celebrated, is recognized as valid (*b*).

The statute law of marriage is contained in a Consolidation Act of 1894 (*c*), as amended in 1898 (*d*) and 1907 (*e*).

(*h*) 1898, s. 20.

(*i*) *Ibid.* s. 23.

(*k*) *Ibid.* ss. 23, 24.

(*l*) 1890, s. 8.

(*m*) *Ibid.* s. 12.

(*n*) *Ibid.* s. 16.

(*o*) *Ibid.*

(*p*) *Ibid.* s. 13.

(*q*) 1898, s. 29.

(*r*) 1890, s. 21.

(*s*) *Ibid.* s. 17.

(*t*) 1909, s. 3.

(*u*) 1898, ss. 18, 19; 1909, s. 6.

(*x*) 1890, ss. 20, 29.

(*y*) 1909, s. 6.

(*z*) 1903, No. 1835.

(*a*) Under the common law of England as of 1829 (Journ. Comp. Leg. Soc. (N. S.), vol. ii. p. 70).

(*b*) 58 Vict. (No. 11) s. 32, re-enacting an Act of 1878.

(*c*) 58 Vict. (No. 11).

(*d*) 62 Vict. (No. 23).

(*e*) 7 Edw. 7 (No. 7).

The legislation is on the same lines as that of New South Wales (*f*). Subject to the provisions of the Act a marriage may be celebrated only—

- (1) By a minister of religion or other person ordinarily officiating as such, who is duly registered as prescribed in the office of the Registrar-General as authorised to celebrate marriages; or
- (2) The district registrar of the district in which the marriage is celebrated (*g*).

Marriage must be celebrated between 8 a.m. and 8 p.m. (*h*), but a district registrar is not bound to celebrate after 4 p.m., or on a Sunday or Bank Holiday (*i*). Two or more witnesses of the age of sixteen or upwards must be present (*k*).

Before the marriage is celebrated a prescribed declaration of no impediment must be made before a minister or district registrar (*l*), and if either party is under twenty-one, not being a widow or widower, the parties must produce the written consent of parent or guardian or of a justice of the peace where the parent or guardian is not in Western Australia or is incapable of consenting by reason of habitual intoxication, mental incapacity, or other substantial cause (*m*).

A minister may not celebrate a marriage, except by special licence, except a certificate of due publication of banns, or of due posting of notice of intention to marry on a church of the district in which one of the parties resides, or of notice of intention to marry given to the district registrar of the district where the parties reside (*n*).

A district registrar may not celebrate a marriage unless the parties sign a declaration that they object to be married by a minister, or that one is not accessible, and have given the prescribed marriage notices, and produce the certificate of the giving thereof (*o*). The officiating registrar must be a registrar who received one of the marriage notices (*p*). The celebration must be in the office of the registrar, and in accordance with the prescribed formulas (*q*).

Where there is not a church of the desired denomination or a district registrar within fifty miles of the residence of the parties or of one party, or the Governor or resident magistrate is satisfied that there is good reason for speedy celebration, and that the circumstances of the case will not permit compliance with the general marriage law, the Governor or magistrate may grant a special licence in a prescribed form (*r*).

The marriages of Quakers according to the usages of their society are not within the Act of 1894 (*s*). Jewish marriages were originally outside the Act (*t*).

But this legislation was modified as to Jews in 1898, and by the Act of 1907 (*u*) provision is made for bringing Jewish marriages within the general law, except as to time of celebration and the rules as to banns, &c.

Marriage under the Acts is not invalidated by defect or error in declarations, notices, or certificates required before celebration if the identity of the parties is not in question (*x*), nor by omission of a minister to register, or by defects in

(*f*) *Ante*, p. 316.

(*g*) Sect. 5, as amended by 1907, s. 4.

(*h*) Sect. 6, as amended by 1907 (No. 7), s. 5.

(*i*) Sect. 6.

(*k*) Sect. 8, as amended by 1907, s. 7.

(*l*) Sect. 7; and see 1907, s. 10.

(*m*) Sects. 9, 10.

(*n*) 1907, s. 8, superseding 1894, s. 12.

(*o*) 1894, ss. 13—17.

(*p*) Sect. 14.

(*q*) Sect. 15.

(*r*) Sect. 20, Sched. 7.

(*s*) Sects. 34, 35.

(*t*) 1898 (No. 23), sects. 2—5.

(*u*) 1907, sects. 14—16.

(*x*) 1894, s. 28; 1907, s. 11. Sect. 12 of the Act of 1907 validates marriages which would be good under it, even if invalid under the Act of 1894.

the appointment of a district registrar (*y*), nor by marriage before a person who is not a qualified minister or registrar, if either party honestly believed him to be qualified (*z*).

Provision is made for triplicate certificates of marriage, and for monthly returns of marriages by all ministers (*a*). The registration of marriages is dealt with by Acts of 1894 (*b*) and 1900 (*c*).

Divorce, &c.]—There is legislation authorising the dissolution of marriage, and the Imperial Legitimacy Declaration Act, 1858 (21 & 22 Vict. c. 93), was adopted in 1867 (31 Vict. No. 8).

C. FIJI.

This possession is under the common law of England as of 2nd January, 1875, so far as the circumstances of the colony and its inhabitants and the limits of colonial jurisdiction allow (*d*).

The statute law of the colony deals separately with the marriages of native Fijians, of persons of Indian parentage, and other persons.

Fijians.]—The marriage and divorce of native Fijians are provided for by native regulations made under Ordinance No. 9 of 1876, and 21 of 1881 (*e*), and having the force of law.

Indians.]—The marriage of persons of Indian origin and their descendants is governed by Ordinance No. 1 of 1892 (*f*).

The Agent-General of Immigration keeps a register of Indian immigrants, in which are entered in the prescribed form the names, &c. of the parties and of the witnesses, if any, to the celebration of their marriage. On the arrival of an emigrant ship the Agent-General ascertains by inquiry whether any of the immigrants stand in the relation of husband and wife, and on their declarations, if uncontradicted by other evidence, enters them in his register as married (*g*).

Where an immigrant on arrival is found to have more than one wife, and all parties declare themselves duly married according to the law of their country, the names of all the wives are registered (*h*).

Provision is made for the proclamation and registration (by a stipendiary magistrate) of marriages in the colony between persons of Indian origin or extraction if the male is fifteen and the female twelve (*i*).

Where the female is under fifteen the consent of her father, or if he be dead of her mother, or if she be dead of the Agent-General (*k*), and in any case a declaration of no impediment, is required (*l*).

A marriage thus contracted on registration by the Agent-General is valid from the date of the registration certificate (*m*).

If the Agent-General refuses to register the marriage, an appeal lies to the Supreme Court (*n*), which can also cancel registrations wrongly made (*o*).

(*y*) Sect. 30.

(*z*) Sect. 29.

(*a*) 1894, s. 11; 1907, s. 13.

(*b*) No. 16.

(*c*) No. 31.

(*d*) For validation of marriages in Fiji before 10th October, 1874, see Ord. No. 6 of 1877 (Ordinances of Fiji (ed. 1906), p. 196); and 41 & 42 Vict. c. 61 (*ante*, p. 237).

(*e*) See Ordinances of Fiji (ed. 1906), p. 175.

(*f*) *Ibid.* p. 817.

(*g*) Sects. 3, 4.

(*h*) Sect. 5.

(*i*) Sect. 6.

(*k*) *Ibid.*

(*l*) *Ibid.*

(*m*) Sects. 7, 13.

(*n*) Sect. 8.

(*o*) Sect. 9.

Impediments.]—The impediments to an Indian marriage in the colony are—

- (a) Existence of a former husband or wife registered as such under the ordinance.
- (b) That either party should be directly descended from the other, or that the female should be sister of the male by the full or the half-blood, or the daughter of his brother or of his sister by the full or the half-blood, or a descendant from either of them, or a daughter of his wife by another father, or his son's, or grandson's or father's or grandfather's widow, or that the male shall be brother of the female either by the full or the half-blood, or a descendant from either of them (*sic*), or the son of her husband by another mother, or of her deceased daughter's or granddaughter's or mother's or grandmother's husband (*p*).

A person whose marriage is registered under the ordinance incurs the penalties of bigamy if he marries again till the marriage registered has been legally dissolved (*q*).

Europeans, &c.]—Ord. No. 4 of 1892 (*r*) deals with Christian and civil marriages. Its provisions do not govern marriages of Jews or Quakers, but such marriages are accepted as valid and are registered (*s*). Indian marriages may not be celebrated under it without production of the certificate of the Agent-General of immigrants (*t*).

The Act provides for the registration as ministers for celebrating marriages of ministers of religion ordinarily officiating as such (*u*). No marriage under the Act may be celebrated except (a) by a registered minister, or (b) by the Registrar-General where the parties declare conscientious objection to being married by a minister, or that there is no minister accessible for celebration (*x*).

The ordinance contains no table of prohibited degrees, but they appear to be those recognized in England in 1875 (*y*). The consent of parents, &c. is required in the case of persons under twenty-one (not being widower or widow) (*z*). The form of the section and the provision for dispensing with consent is the same as in New South Wales (*a*).

There is no rule as to the time or place of marriage. But before celebration the parties must make the prescribed declaration of no impediment, and necessary consents obtained (*b*). Two witnesses at least must be present. The minister or registrar is entitled to require the parties to give him the necessary particulars for the certificate of marriage, and to endorse parental consents thereon. The witnesses of the marriage must sign the certificate, and the original is sent to the Registrar-General (*c*).

A marriage is not avoided by defect or error in the declaration made where the identity of the parties is not in question (*d*), nor by celebration before an unregistered minister if either party at the time believed the minister was an ordinarily officiating registered minister (*e*).

Foreign Marriage.]—Ord. 4 of 1904 makes provision as to the colony for the purposes of the Foreign Marriage Order in Council of 1903 (*f*).

Divorce is regulated by Ord. No. 4 of 1899.

(*p*) Sects. 10, 11.

(*q*) Sect. 16. As to divorce, see Ord. No. 4 of 1899.

(*r*) Printed as amended up to 1905 (Fiji Ordinances (ed. 1906), p. 833).

(*s*) Sects. 3, 4.

(*t*) Under sect. 6 of the Indian Marriage Ordinance (*ante*, p. 325) celebration of marriage between Indian Christians does not affect the validity of marriages previously celebrated under the Indian Marriage Ordinance (*vide* Ord. No. 6 of 1894).

(*u*) Sect. 6.

(*x*) Sect. 12.

(*y*) *Vide ante*, p. 325.

(*z*) Sects. 17, 18.

(*a*) *Ante*, p. 316.

(*b*) Sect. 14.

(*c*) Sects. 13, 15, 19.

(*d*) Sect. 14.

(*e*) Sect. 15.

(*f*) *Ante*, p. 119.

D. NEW ZEALAND.

The common law of this dominion is that of England as of the date of its first settlement.

Lord Lyndhurst's Act was part of the original law of the dominion (*g*).

The statute law of the dominion as to marriage (*h*) and divorce (*i*) was consolidated (or compiled) in 1904, and again in 1908 (*k*).

The Marriage Act does not apply to marriages contracted otherwise than under its provisions between two persons both of the aboriginal native race (*l*).

The table of prohibited degrees (*m*) is altered by legalising marriage with a deceased wife's sister (*n*), or a deceased husband's brother (*o*).

An Act of 1905 (No. 64) (*p*) validated certain marriages already celebrated between a man and his deceased wife's niece (*i.e.*, the daughter of the sister or brother of his deceased wife), and between a woman and her deceased husband's nephew (*i.e.*, the son of a brother or sister of her deceased husband).

Celebration.—The persons who may celebrate marriage in New Zealand are—

- (1) Officiating ministers, *i.e.*, ministers of religion (*q*) whose names are sent to the Registrar-General by the ecclesiastical authority or reputed authority of the religious bodies specified in Schedule C., or two duly recognized office bearers of the body (*r*) who, not belonging to any of the scheduled bodies, produce a certificate from the recognized head of his denomination in New Zealand, or two duly recognized ministers, or ten adult members thereof (*r*).

The list of officiating ministers is gazetted, and provision is made for adding or cancelling names (*s*).

- (2) The registrars appointed under the Act (*t*).

Before a marriage can be celebrated, notice in a prescribed form must be given to the registrar of the district within which one of the parties has dwelt for not less than three days, or if they dwell in different districts, then to the registrar of each. The notice is entered up in a marriage notice book, which is open to inspection during office hours.

The notice must (*inter alia*) specify the place where it is desired to celebrate the marriage (*u*).

If either party is under twenty-one, not being widower or widow, the consent of father, &c. is necessary (*v*).

(*g*) See *Wilson v. Bennett* (1907), 26 N. Z. L. R. 112.

(*h*) 1904 (No. 19), now No. 113, Consolidated Statutes of 1908.

(*i*) 1904 (No. 18), now No. 50, Consolidated Statutes of 1908.

(*k*) Cons. Statutes, 1908, Nos. 50, 113.

(*l*) 1908 (No. 113), s. 2 (*Matiu v. Monika Reweti* (1907), 26 N. Z. L. R. 642). Such marriages may be solemnized by ministers of religion under an earlier Act of 1842 (*ibid.*).

(*m*) These degrees are recognized in the Divorce Act, and include consanguinity or affinity by the half-blood. See *Wilson v. Bennett* (1907), 26 N. Z. L. R. 112.

(*n*) In 1880 (No. 57), now sect. 44 of the Marriage Act of 1908.

(*o*) In 1900 (No. 72), now sect. 45 of the Act of 1908.

(*p*) This Act was reserved and sanctioned, and is now incorporated in sect. 46 of the Act of 1908.

(*q*) 1908, c. 113, s. 9. The schedule includes the Anglican, Roman Catholic, and Presbyterian Churches, the Society of Friends, Hebrew congregations, Congregational Independents, Baptists, Primitive Methodists, Lutherans, and the Wesleyan Methodist Church of Australasia in New Zealand. Correct lists must be sent in annually by the ecclesiastical authority (sects. 11, 12), and suspension or deprivation must be certified (sect. 13).

(*r*) *Ibid.* sect. 10. The signatures of ministers must be verified before a justice by statutory declaration.

(*s*) Sects. 14—16.

(*t*) Sects. 4, 34.

(*u*) Sects. 17, 18, Sched. IV.

(*x*) Sect. 19. The Supreme Court may appoint guardians *ad hoc*.

In the event of unreasonable refusal to consent, a judge of the Supreme Court may approve the marriage on petition and after summary inquiry (*y*).

After the receipt and entry of the notice, if the proper consents when needed have been given and no caveat has been entered, or a caveat if entered has been overruled (*z*), and after solemn declaration of the truth of the notice and of absence of impediments, and that the necessary consents have been obtained, or that there is no one in New Zealand who can give them, the registrar may issue a certificate. The issue of the certificate may be immediate on the giving of the marriage notice if it appears that the parties are *sui juris*, or if under age have the necessary consents (*a*); but fourteen days' delay is required in the case of minors who have no one in the colony to give the required consent (*b*). The certificate is good for three months (*c*), and specifies the place where the marriage is to be celebrated (*c*). It authorises, but does not compel, officiating ministers to celebrate the marriage (*d*).

The marriage must be celebrated in the place specified in the certificate, with open doors, in the presence of two or more witnesses and of the officiating minister (*e*), or if the parties object to a minister, of the registrar (*f*).

In the case of religious marriages, the forms and ceremonies are such as the parties think fit to adopt (*g*). The form for marriage before a registrar is prescribed, and includes declaration of no impediment and of consent of each party to take the other in wedlock (*h*).

Jews and Quakers.]—The provisions of the Act as to notices and registrars' certificates apply to the marriages of Jews and Quakers, but the provisions as to celebration by an officiating minister do not. A certificate of such marriage must, under penalty, be sent to the registrar within one month after the marriage (*i*).

Full provision is made for registration of marriages immediately after celebration by the officiating minister or registrar (*k*).

Marriages under the Act are not invalidated by lack of the necessary consents or non-residence of either party within the district of celebration, or defects in the notice, declaration or certificate, or registration where the identity of the parties is not questioned (*l*).

But a marriage is void if the parties knowingly and wilfully intermarry without certificate from the registrar or in the absence of an officiating minister or registrar except in the case of Jews or Quakers (*m*).

Legitimation.]—A child born before the marriage of its parents is legitimated by their subsequent marriage if at the time of its birth there was no legal impediment to their marriage, and if after the marriage the child is registered as his by the husband (*n*).

Divorce.]—Jurisdiction depends on domicile of two years in New Zealand (*n*). A deserted wife does not lose her domicile by removal of her husband from New Zealand (*o*).

The grounds of divorce are—

- (1) Adultery since 1st June, 1899;
- (2) Wilful desertion without just cause for five years;

(*y*) Sect. 20.

(*z*) Sects. 21—23.

(*a*) Sects. 24—26.

(*b*) Sect. 27.

(*c*) Sect. 29.

(*d*) Sect. 26, Sched. V.

(*e*) Sect. 28.

(*f*) Sects. 31, 32, 34.

(*g*) Sect. 32.

(*h*) Sect. 34.

(*i*) Sect. 33.

(*k*) Sects. 35—43.

(*l*) Sect. 47.

(*m*) Sect. 48. See *Matiu v. Monika Reweti* (1907), 26 N. Z. L. R. 642.

(*n*) 1908 (No. 50), s. 21.

(*o*) See *Walker v. Walker* (1909), 28 N. Z. L. R. 917.

(3) Habitual drunkenness for four years, and in the case of a husband habitually leaving the wife without support, or being habitually cruel, or in the case of a wife habitually neglecting domestic duties and rendering herself unfit to discharge them.

(4) Conviction and sentence to seven or more years' imprisonment for attempting to take the life of the other spouse (*p*).

(5) In certain events lunacy (*q*).

There is also jurisdiction to decree nullity of marriage, substantially on the grounds recognized in England up to 1857 (*r*).

E. PACIFIC ISLANDS, &c.

The islands and territories in the Pacific Ocean which are subject to British dominion or control are governed by the English common law so far as non-natives are concerned (*s*).

Civil marriage.]—The Pacific Civil Marriages Order in Council, 1907 (*t*), provides for the establishment of marriage districts in the possessions and protectorates of his Majesty in the Pacific (*u*). The districts are established by order of the High Commissioner published in the Fiji Royal Gazette. Registrars are appointed for each district (*x*).

Preliminaries.]—Unless a special licence is obtained, the parties must give notice to the proper registrar in the prescribed form (*y*). After affixing the notice in his office for twenty-one days, he may issue his certificate if satisfied by affidavit as to residence, consents in the case of persons under twenty-one, impediments, &c., and whether either party is married by native law or custom to any one other than the person with whom the marriage is proposed to be contracted (*z*).

The officer who takes the affidavit has to tell the parties the prohibited degrees of consanguinity, &c. (*a*), and explains the consequences as to succession *ab intestato* which will flow from marriage under the order (*b*).

The law as to caveats, consents, &c. is substantially as in England (*c*), but special provision is made for cases in which the parent cannot write or does not know English (*d*).

The High Commissioner may grant special licences if satisfied that there is no impediment, and that the necessary consents have been obtained (*e*).

Celebration.]—All marriages under the order are celebrated in the office of the registrar, between 10 a.m. and 4 p.m., with open doors, in the presence of two witnesses.

The registrar, on production of the certificate or special licence, inquires of the parties directly or through an interpreter whether they came there to become man and wife.

(*p*) 1908 (No. 50), s. 21 (1) (*d*). Sects. 22, 23 preserve certain other rights to a wife to petition on grounds substantially the same as in England.

(*q*) 1908 (No. 50), s. 22 (1) (*f*); *Stevens v. Stevens* (1908), 27 N. Z. L. R. 938; *M. v. M.* (1909), 28 N. Z. L. R. 138.

(*r*) See *Wilson v. Bennett* (1907), 26 N. Z. L. R. 112.

(*s*) Pacific Order in Council, 1877; and see Regulation No. 1 of 1896 (*post*, p. 330).

(*t*) 6th July, 1907 (St. R. & O. (1907), p. 203 (No. 543)).

(*u*) Within the Pacific Order in Council, 1893, or any Order in Council amending, adding to, or substituted for the same—*e.g.*, Order in Council of 2nd November, 1907, New Hebrides.

(*x*) Art. 3.

(*y*) Art. 6.

(*z*) Arts. 9, 10.

(*a*) Art. 10. They are those of the English law (Art. 27).

(*b*) Art. 30 (*b*) gives special directions where a party to an intended marriage is subject to native law or custom.

(*c*) Arts. 13—19.

(*d*) Art. 18.

(*e*) Art. 12. This licence is granted without the preliminaries required for the registrar's certificate.

If they say yes, he proceeds thus—

Know ye that by the public taking of each other as man and wife in my presence and the presence of the persons now here, and by the subsequent attestation thereof by signing your names to that effect, you become legally married to each other, although no other rite of a civil or religious nature shall take place; and that the marriage cannot be dissolved during your lifetime except by a valid judgment of divorce: and if either of you before the death of the other shall contract another marriage while this remains undissolved you will be thereby guilty of bigamy.

Each of the parties then says to the other: "I call upon all persons here present to witness that I, A. B., do take thee, C. D., to be my lawful wife" (or husband) (*f*).

Marriage certificate.]—A certificate is then filled up and signed, and the marriage is registered (*g*).

A marriage properly celebrated under the order is valid, unless the parties are within the prohibited degrees, or either is already married by native law or custom to another person (*h*).

And such marriage while it subsists debars the parties from contracting a valid marriage under any native law or custom; but the order does not otherwise affect native marriages (*i*).

Christian marriage.]—The celebration and registration of Christian marriages is regulated by Regulation No. 1 of 1896. Under this regulation registered ministers are provided by the High Commissioner with forms of marriage certificate (*k*), and are authorised to celebrate marriages between persons who would if living in England be legally competent to contract marriage (*l*). The marriage must be by a registered minister, and the place where he officiates must be registered (*m*). A declaration of no impediment is required (*n*). Two witnesses besides the minister must be present (*o*). The minister must sign in duplicate a certificate of the marriage immediately after celebration, and give one copy to one of the parties, and within a month or on the first opportunity send the other to the High Commissioner (*p*).

(*f*) Art. 20.

(*g*) Arts. 22—27.

(*h*) Arts. 27 (1), 28 (f). The rest of sect. 27 indicates what irregularities in celebration are fatal.

(*i*) Art. 29.

(*k*) Sects. 2, 3.

(*l*) Sect. 5.

(*m*) *Ibid.*

(*n*) Sect. 8.

(*o*) Sect. 11.

(*p*) *Ibid.*

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